

ALTERNATIVE ENERGY DEVELOPMENT TAX INCENTIVES

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses provisions related to alternative energy development tax incentives.

Highlighted Provisions:

This bill:

- ▶ repeals the Alternative Energy Development Act and enacts the Alternative Energy Development Tax Credit Act related to alternative energy development tax credits;
- ▶ repeals provisions related to alternative energy development tax credits in economic development tax credit provisions;
- ▶ defines terms;
- ▶ enacts alternative energy development tax credits;
- ▶ modifies and expands alternative energy sales and use tax exemptions;
- ▶ extends the time period for claiming certain sales and use tax exemptions related to alternative energy;
- ▶ requires the Office of Energy Development to administer the alternative energy development tax credits; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides effective dates.



28 This bill provides for retrospective operation.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **10-1-304**, as last amended by Laws of Utah 2009, Chapter 92

32 **59-7-614.2**, as last amended by Laws of Utah 2011, Chapter 384

33 **59-10-1107**, as last amended by Laws of Utah 2011, Chapter 384

34 **59-12-102**, as last amended by Laws of Utah 2011, Chapters 14, 285, and 314

35 **59-12-104**, as last amended by Laws of Utah 2011, Chapters 288, 314, 370, and 391

36 **63M-4-401**, as enacted by Laws of Utah 2011, Chapter 375

37 ENACTS:

38 **59-7-614.7**, Utah Code Annotated 1953

39 **59-10-1110**, Utah Code Annotated 1953

40 **63M-4-501**, Utah Code Annotated 1953

41 **63M-4-502**, Utah Code Annotated 1953

42 **63M-4-503**, Utah Code Annotated 1953

43 **63M-4-504**, Utah Code Annotated 1953

44 **63M-4-505**, Utah Code Annotated 1953

45 REPEALS:

46 **63M-1-2801**, as last amended by Laws of Utah 2010, Chapter 45

47 **63M-1-2802**, as last amended by Laws of Utah 2010, Chapter 45

48 **63M-1-2803**, as last amended by Laws of Utah 2010, Chapter 45

49 **63M-1-2804**, as last amended by Laws of Utah 2010, Chapter 45

50 **63M-1-2805**, as last amended by Laws of Utah 2010, Chapter 45

51 **63M-1-2806**, as last amended by Laws of Utah 2011, Chapter 384



53 *Be it enacted by the Legislature of the state of Utah:*

54 Section 1. Section **10-1-304** is amended to read:

55 **10-1-304. Municipality and military installation development authority may levy**
56 **tax -- Rate -- Imposition or repeal of tax -- Tax rate change -- Effective date -- Notice**
57 **requirements -- Exemptions.**

58 (1) (a) Except as provided in Subsections (4) and (5), a municipality may levy a

59 municipal energy sales and use tax on the sale or use of taxable energy within the municipality:

60 (i) by ordinance as provided in Section 10-1-305; and

61 (ii) of up to 6% of the delivered value of the taxable energy.

62 (b) Subject to Section 63H-1-203, the military installation development authority
63 created in Section 63H-1-201 may levy a municipal energy sales and use tax under this part
64 within a project area described in a project area plan adopted by the authority under Title 63H,
65 Chapter 1, Military Installation Development Authority Act, as though the authority were a
66 municipality.

67 (2) A municipal energy sales and use tax imposed under this part may be in addition to
68 any sales and use tax imposed by the municipality under Title 59, Chapter 12, Sales and Use
69 Tax Act.

70 (3) (a) For purposes of this Subsection (3):

71 (i) "Annexation" means an annexation to a municipality under [~~Title 10,~~] Chapter 2,
72 Part 4, Annexation.

73 (ii) "Annexing area" means an area that is annexed into a municipality.

74 (b) (i) If, on or after May 1, 2000, a city or town enacts or repeals a tax or changes the
75 rate of a tax under this part, the enactment, repeal, or change shall take effect:

76 (A) on the first day of a calendar quarter; and

77 (B) after a 90-day period beginning on the date the commission receives notice meeting
78 the requirements of Subsection (3)(b)(ii) from the municipality.

79 (ii) The notice described in Subsection (3)(b)(i)(B) shall state:

80 (A) that the city or town will enact or repeal a tax or change the rate of a tax under this
81 part;

82 (B) the statutory authority for the tax described in Subsection (3)(b)(ii)(A);

83 (C) the effective date of the tax described in Subsection (3)(b)(ii)(A); and

84 (D) if the city or town enacts the tax or changes the rate of the tax described in
85 Subsection (3)(b)(ii)(A), the new rate of the tax.

86 (c) (i) If, for an annexation that occurs on or after May 1, 2000, the annexation will
87 result in a change in the rate of a tax under this part for an annexing area, the change shall take
88 effect:

89 (A) on the first day of a calendar quarter; and

90 (B) after a 90-day period beginning on the date the commission receives notice meeting
91 the requirements of Subsection (3)(c)(ii) from the municipality that annexes the annexing area.

92 (ii) The notice described in Subsection (3)(c)(i)(B) shall state:

93 (A) that the annexation described in Subsection (3)(c)(i) will result in a change in the
94 rate of a tax under this part for the annexing area;

95 (B) the statutory authority for the tax described in Subsection (3)(c)(ii)(A);

96 (C) the effective date of the tax described in Subsection (3)(c)(ii)(A); and

97 (D) the new rate of the tax described in Subsection (3)(c)(ii)(A).

98 (4) ~~(a) [A]~~ Subject to Subsection (4)(b), a sale or use of electricity within a
99 municipality is exempt from the tax authorized by this section if the sale or use is~~[-(a)]~~ made
100 under a tariff adopted by the Public Service Commission of Utah only for purchase of
101 electricity produced from a new [wind, geothermal, biomass, or solar power energy] source of
102 alternative energy, as defined in Section 59-12-102, as designated in the tariff by the Public
103 Service Commission of Utah~~[-and].~~

104 ~~[(b) for an amount of electricity that is:]~~

105 ~~[(i) unrelated to the amount of electricity used by the person purchasing the electricity~~
106 ~~under the tariff described in Subsection (4)(a); and]~~

107 ~~[(ii) equivalent to the number of kilowatthours specified in the tariff described in~~
108 ~~Subsection (4)(a) that may be purchased under the tariff described in Subsection (4)(a).]~~

109 (b) The exemption under Subsection (4)(a) applies to the portion of the tariff rate a
110 customer pays under the tariff described in Subsection (4)(a) that exceeds the tariff rate under
111 the tariff described in Subsection (4)(a) that the customer would have paid absent the tariff.

112 (5) (a) A municipality may not levy a municipal energy sales and use tax within any
113 portion of the municipality that is within a project area described in a project area plan adopted
114 by the military installation development authority under Title 63H, Chapter 1, Military
115 Installation Development Authority Act.

116 (b) Subsection (5)(a) does not apply to the military installation development authority's
117 levy of a municipal energy sales and use tax.

118 Section 2. Section **59-7-614.2** is amended to read:

119 **59-7-614.2. Refundable economic development tax credit.**

120 (1) As used in this section:

121 (a) "Business entity" means a taxpayer that meets the definition of "business entity" as
122 defined in Section 63M-1-2403 [~~or 63M-1-2803~~].

123 (b) "Community development and renewal agency" is as defined in Section 17C-1-102.

124 (c) "Local government entity" is as defined in Section 63M-1-2403.

125 (d) "Office" means the Governor's Office of Economic Development.

126 (2) Subject to the other provisions of this section, a business entity, local government
127 entity, or community development and renewal agency may claim a refundable tax credit for
128 economic development.

129 (3) The tax credit under this section is the amount listed as the tax credit amount on the
130 tax credit certificate that the office issues to the business entity, local government entity, or
131 community development and renewal agency for the taxable year.

132 (4) A community development and renewal agency may claim a tax credit under this
133 section only if a local government entity assigns the tax credit to the community development
134 and renewal agency in accordance with Section 63M-1-2404.

135 (5) (a) In accordance with any rules prescribed by the commission under Subsection
136 (5)(b), the commission shall make a refund to the following that claim a tax credit under this
137 section:

138 (i) a local government entity;

139 (ii) a community development and renewal agency; or

140 (iii) a business entity if the amount of the tax credit exceeds the business entity's tax
141 liability for a taxable year.

142 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
143 commission may make rules providing procedures for making a refund to a business entity,
144 local government entity, or community development and renewal agency as required by
145 Subsection (5)(a).

146 (6) (a) On or before October 1, 2013, and every five years after October 1, 2013, the
147 Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and
148 make recommendations to the Legislative Management Committee and the Workforce Services
149 and Community and Economic Development Interim Committee concerning whether the tax
150 credit should be continued, modified, or repealed.

151 (b) For purposes of the study required by this Subsection (6), the office shall provide

152 the following information to the Revenue and Taxation Interim Committee:

153 (i) the amount of tax credit that the office grants to each business entity, local
154 government entity, or community development and renewal agency for each calendar year;

155 (ii) the criteria that the office uses in granting a tax credit;

156 (iii) (A) for a business entity, the new state revenues generated by the business entity
157 for the calendar year; or

158 (B) for a local government entity, regardless of whether the local government entity
159 assigns the tax credit in accordance with Section 63M-1-2404, the new state revenues
160 generated as a result of a new commercial project within the local government entity for each
161 calendar year;

162 (iv) the information contained in the office's latest report to the Legislature under
163 Section 63M-1-2406 [~~or 63M-1-2806~~]; and

164 (v) any other information that the Revenue and Taxation Interim Committee requests.

165 (c) The Revenue and Taxation Interim Committee shall ensure that its
166 recommendations under Subsection (6)(a) include an evaluation of:

167 (i) the cost of the tax credit to the state;

168 (ii) the purpose and effectiveness of the tax credit; and

169 (iii) the extent to which the state benefits from the tax credit.

170 Section 3. Section **59-7-614.7** is enacted to read:

171 **59-7-614.7. Nonrefundable alternative energy development tax credit.**

172 (1) As used in this section:

173 (a) "Alternative energy entity" is as defined in Section 63M-4-502.

174 (b) "Alternative energy project" is as defined in Section 63M-4-502.

175 (c) "Office" is as defined in Section 63M-4-401.

176 (2) Subject to the other provisions of this section, an alternative energy entity may
177 claim a nonrefundable tax credit for alternative energy development as provided in this section.

178 (3) The tax credit under this section is the amount listed as the tax credit amount on a
179 tax credit certificate that the office issues to the alternative energy entity for the taxable year.

180 (4) An alternative energy entity may carry forward a tax credit under this section for a
181 period that does not exceed the next seven taxable years if:

182 (a) the alternative energy entity is allowed to claim a tax credit under this section for a

183 taxable year; and

184 (b) the amount of the tax credit exceeds the alternative energy entity's tax liability
 185 under this chapter for that taxable year.

186 (5) (a) On or before October 1, 2017, and every five years after October 1, 2017, the
 187 Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and
 188 make recommendations to the Legislative Management Committee concerning whether the tax
 189 credit should be continued, modified, or repealed.

190 (b) For purposes of the study required by this Subsection (5), the office shall provide
 191 the following information to the Revenue and Taxation Interim Committee:

192 (i) the amount of tax credit that the office grants to each alternative energy entity for
 193 each taxable year;

194 (ii) the new state revenues generated by each alternative energy project;

195 (iii) the information contained in the office's latest report to the Legislature under
 196 Section 63M-4-505; and

197 (iv) any other information that the Revenue and Taxation Interim Committee requests.

198 (c) The Revenue and Taxation Interim Committee shall ensure that its
 199 recommendations under Subsection (5)(a) include an evaluation of:

200 (i) the cost of the tax credit to the state;

201 (ii) the purpose and effectiveness of the tax credit; and

202 (iii) the extent to which the state benefits from the tax credit.

203 Section 4. Section **59-10-1107** is amended to read:

204 **59-10-1107. Refundable economic development tax credit.**

205 (1) As used in this section:

206 (a) "Business entity" means a claimant, estate, or trust that meets the definition of
 207 "business entity" as defined in Section 63M-1-2403 [~~or 63M-1-2803~~].

208 (b) "Office" means the Governor's Office of Economic Development.

209 (2) Subject to the other provisions of this section, a business entity may claim a
 210 refundable tax credit for economic development.

211 (3) The tax credit under this section is the amount listed as the tax credit amount on the
 212 tax credit certificate that the office issues to the business entity for the taxable year.

213 (4) (a) In accordance with any rules prescribed by the commission under Subsection

214 (4)(b), the commission shall make a refund to a business entity that claims a tax credit under
215 this section if the amount of the tax credit exceeds the business entity's tax liability for a
216 taxable year.

217 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
218 commission may make rules providing procedures for making a refund to a business entity as
219 required by Subsection (4)(a).

220 (5) (a) On or before October 1, 2013, and every five years after October 1, 2013, the
221 Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and
222 make recommendations to the Legislative Management Committee and the Workforce Services
223 and Community and Economic Development Interim Committee concerning whether the tax
224 credit should be continued, modified, or repealed.

225 (b) For purposes of the study required by this Subsection (5), the office shall provide
226 the following information to the Revenue and Taxation Interim Committee:

227 (i) the amount of tax credit the office grants to each taxpayer for each calendar year;

228 (ii) the criteria the office uses in granting a tax credit;

229 (iii) the new state revenues generated by each taxpayer for each calendar year;

230 (iv) the information contained in the office's latest report to the Legislature under
231 Section 63M-1-2406 [~~or 63M-1-2806~~]; and

232 (v) any other information that the Revenue and Taxation Interim Committee requests.

233 (c) The Revenue and Taxation Interim Committee shall ensure that its
234 recommendations under Subsection (5)(a) include an evaluation of:

235 (i) the cost of the tax credit to the state;

236 (ii) the purpose and effectiveness of the tax credit; and

237 (iii) the extent to which the state benefits from the tax credit.

238 Section 5. Section **59-10-1110** is enacted to read:

239 **59-10-1110. Nonrefundable alternative energy development tax credit.**

240 (1) As used in this section:

241 (a) "Alternative energy entity" is as defined in Section 63M-4-502.

242 (b) "Alternative energy project" is as defined in Section 63M-4-502.

243 (c) "Office" is as defined in Section 63M-4-401.

244 (2) Subject to the other provisions of this section, an alternative energy entity may

245 claim a nonrefundable tax credit for alternative energy development as provided in this section.

246 (3) The tax credit under this section is the amount listed as the tax credit amount on a
247 tax credit certificate that the office issues to the alternative energy entity for the taxable year.

248 (4) An alternative energy entity may carry forward a tax credit under this section for a
249 period that does not exceed the next seven taxable years if:

250 (a) the alternative energy entity is allowed to claim a tax credit under this section for a
251 taxable year; and

252 (b) the amount of the tax credit exceeds the alternative energy entity's tax liability
253 under this chapter for that taxable year.

254 (5) (a) On or before October 1, 2017, and every five years after October 1, 2017, the
255 Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and
256 make recommendations to the Legislative Management Committee concerning whether the tax
257 credit should be continued, modified, or repealed.

258 (b) For purposes of the study required by this Subsection (5), the office shall provide
259 the following information to the Revenue and Taxation Interim Committee:

260 (i) the amount of tax credit that the office grants to each alternative energy entity for
261 each taxable year;

262 (ii) the new state revenues generated by each alternative energy project;

263 (iii) the information contained in the office's latest report to the Legislature under
264 Section 63M-4-505; and

265 (iv) any other information that the Revenue and Taxation Interim Committee requests.

266 (c) The Revenue and Taxation Interim Committee shall ensure that its
267 recommendations under Subsection (5)(a) include an evaluation of:

268 (i) the cost of the tax credit to the state;

269 (ii) the purpose and effectiveness of the tax credit; and

270 (iii) the extent to which the state benefits from the tax credit.

271 Section 6. Section **59-12-102** is amended to read:

272 **59-12-102. Definitions.**

273 As used in this chapter:

274 (1) "800 service" means a telecommunications service that:

275 (a) allows a caller to dial a toll-free number without incurring a charge for the call; and

276 (b) is typically marketed:
277 (i) under the name 800 toll-free calling;
278 (ii) under the name 855 toll-free calling;
279 (iii) under the name 866 toll-free calling;
280 (iv) under the name 877 toll-free calling;
281 (v) under the name 888 toll-free calling; or
282 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the
283 Federal Communications Commission.
284 (2) (a) "900 service" means an inbound toll telecommunications service that:
285 (i) a subscriber purchases;
286 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to
287 the subscriber's:
288 (A) prerecorded announcement; or
289 (B) live service; and
290 (iii) is typically marketed:
291 (A) under the name 900 service; or
292 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal
293 Communications Commission.
294 (b) "900 service" does not include a charge for:
295 (i) a collection service a seller of a telecommunications service provides to a
296 subscriber; or
297 (ii) the following a subscriber sells to the subscriber's customer:
298 (A) a product; or
299 (B) a service.
300 (3) (a) "Admission or user fees" includes season passes.
301 (b) "Admission or user fees" does not include annual membership dues to private
302 organizations.
303 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
304 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
305 Agreement after November 12, 2002.
306 (5) "Agreement combined tax rate" means the sum of the tax rates:

- 307 (a) listed under Subsection (6); and
- 308 (b) that are imposed within a local taxing jurisdiction.
- 309 (6) "Agreement sales and use tax" means a tax imposed under:
- 310 (a) Subsection 59-12-103(2)(a)(i)(A);
- 311 (b) Subsection 59-12-103(2)(b)(i);
- 312 (c) Subsection 59-12-103(2)(c)(i);
- 313 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
- 314 (e) Section 59-12-204;
- 315 (f) Section 59-12-401;
- 316 (g) Section 59-12-402;
- 317 (h) Section 59-12-703;
- 318 (i) Section 59-12-802;
- 319 (j) Section 59-12-804;
- 320 (k) Section 59-12-1102;
- 321 (l) Section 59-12-1302;
- 322 (m) Section 59-12-1402;
- 323 (n) Section 59-12-1802;
- 324 (o) Section 59-12-2003;
- 325 (p) Section 59-12-2103;
- 326 (q) Section 59-12-2213;
- 327 (r) Section 59-12-2214;
- 328 (s) Section 59-12-2215;
- 329 (t) Section 59-12-2216;
- 330 (u) Section 59-12-2217; or
- 331 (v) Section 59-12-2218.
- 332 (7) "Aircraft" is as defined in Section 72-10-102.
- 333 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- 334 (a) except for an airline as defined in Section 59-2-102 or an affiliated group as defined
- 335 in Subsection 59-12-107(1)(f) of an airline; and
- 336 (b) that has the workers, expertise, and facilities to perform the following, regardless of
- 337 whether the business entity performs the following in this state:

- 338 (i) check, diagnose, overhaul, and repair:
- 339 (A) an onboard system of a fixed wing turbine powered aircraft; and
- 340 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
- 341 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
- 342 engine;
- 343 (iii) perform at least the following maintenance on a fixed wing turbine powered
- 344 aircraft:
- 345 (A) an inspection;
- 346 (B) a repair, including a structural repair or modification;
- 347 (C) changing landing gear; and
- 348 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- 349 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
- 350 completely apply new paint to the fixed wing turbine powered aircraft; and
- 351 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
- 352 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
- 353 authority that certifies the fixed wing turbine powered aircraft.
- 354 (9) "Alcoholic beverage" means a beverage that:
- 355 (a) is suitable for human consumption; and
- 356 (b) contains .5% or more alcohol by volume.
- 357 (10) "Alternative energy" means:
- 358 (a) biomass energy;
- 359 (b) geothermal energy;
- 360 (c) hydroelectric energy;
- 361 (d) solar energy;
- 362 (e) wind energy; or
- 363 (f) energy that is derived from:
- 364 (i) coal-to-liquids;
- 365 (ii) nuclear fuel;
- 366 (iii) oil-impregnated diatomaceous earth;
- 367 (iv) oil sands;
- 368 (v) oil shale; or

369 (vi) petroleum coke.

370 (11) (a) Subject to Subsection (11)(b), "alternative energy electricity production
371 facility" means a facility that:

372 (i) uses alternative energy to produce electricity; and

373 (ii) has a production capacity of 2 megawatts or greater.

374 (b) A facility is an alternative energy electricity production facility regardless of
375 whether the facility is:

376 (i) connected to an electric grid; or

377 (ii) located on the premises of an electricity consumer.

378 ~~[(10)]~~ (12) (a) "Ancillary service" means a service associated with, or incidental to, the
379 provision of telecommunications service.

380 (b) "Ancillary service" includes:

381 (i) a conference bridging service;

382 (ii) a detailed communications billing service;

383 (iii) directory assistance;

384 (iv) a vertical service; or

385 (v) a voice mail service.

386 ~~[(11)]~~ (13) "Area agency on aging" is as defined in Section 62A-3-101.

387 ~~[(12)]~~ (14) "Assisted amusement device" means an amusement device, skill device, or
388 ride device that is started and stopped by an individual:

389 (a) who is not the purchaser or renter of the right to use or operate the amusement
390 device, skill device, or ride device; and

391 (b) at the direction of the seller of the right to use the amusement device, skill device,
392 or ride device.

393 ~~[(13)]~~ (15) "Assisted cleaning or washing of tangible personal property" means
394 cleaning or washing of tangible personal property if the cleaning or washing labor is primarily
395 performed by an individual:

396 (a) who is not the purchaser of the cleaning or washing of the tangible personal
397 property; and

398 (b) at the direction of the seller of the cleaning or washing of the tangible personal
399 property.

400 [~~(14)~~] (16) "Authorized carrier" means:

401 (a) in the case of vehicles operated over public highways, the holder of credentials
402 indicating that the vehicle is or will be operated pursuant to both the International Registration
403 Plan and the International Fuel Tax Agreement;

404 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
405 certificate or air carrier's operating certificate; or

406 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
407 stock, the holder of a certificate issued by the United States Surface Transportation Board.

408 [~~(15)~~] (17) (a) Except as provided in Subsection [~~(15)~~] (17)(b), "biomass energy"
409 means any of the following that is used as the primary source of energy to produce fuel or
410 electricity:

411 (i) material from a plant or tree; or

412 (ii) other organic matter that is available on a renewable basis, including:

413 (A) slash and brush from forests and woodlands;

414 (B) animal waste;

415 (C) methane produced:

416 (I) at landfills; or

417 (II) as a byproduct of the treatment of wastewater residuals;

418 (D) aquatic plants; and

419 (E) agricultural products.

420 (b) "Biomass energy" does not include:

421 (i) black liquor;

422 (ii) treated woods; or

423 (iii) biomass from municipal solid waste other than methane produced:

424 (A) at landfills; or

425 (B) as a byproduct of the treatment of wastewater residuals.

426 [~~(16)~~] (18) (a) "Bundled transaction" means the sale of two or more items of tangible
427 personal property, products, or services if the tangible personal property, products, or services
428 are:

429 (i) distinct and identifiable; and

430 (ii) sold for one nonitemized price.

- 431 (b) "Bundled transaction" does not include:
- 432 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
433 the basis of the selection by the purchaser of the items of tangible personal property included in
434 the transaction;
- 435 (ii) the sale of real property;
- 436 (iii) the sale of services to real property;
- 437 (iv) the retail sale of tangible personal property and a service if:
- 438 (A) the tangible personal property:
- 439 (I) is essential to the use of the service; and
- 440 (II) is provided exclusively in connection with the service; and
- 441 (B) the service is the true object of the transaction;
- 442 (v) the retail sale of two services if:
- 443 (A) one service is provided that is essential to the use or receipt of a second service;
- 444 (B) the first service is provided exclusively in connection with the second service; and
- 445 (C) the second service is the true object of the transaction;
- 446 (vi) a transaction that includes tangible personal property or a product subject to
447 taxation under this chapter and tangible personal property or a product that is not subject to
448 taxation under this chapter if the:
- 449 (A) seller's purchase price of the tangible personal property or product subject to
450 taxation under this chapter is de minimis; or
- 451 (B) seller's sales price of the tangible personal property or product subject to taxation
452 under this chapter is de minimis; and
- 453 (vii) the retail sale of tangible personal property that is not subject to taxation under
454 this chapter and tangible personal property that is subject to taxation under this chapter if:
- 455 (A) that retail sale includes:
- 456 (I) food and food ingredients;
- 457 (II) a drug;
- 458 (III) durable medical equipment;
- 459 (IV) mobility enhancing equipment;
- 460 (V) an over-the-counter drug;
- 461 (VI) a prosthetic device; or

- 462 (VII) a medical supply; and
- 463 (B) subject to Subsection [~~(16)~~] (18)(f):
- 464 (I) the seller's purchase price of the tangible personal property subject to taxation under
- 465 this chapter is 50% or less of the seller's total purchase price of that retail sale; or
- 466 (II) the seller's sales price of the tangible personal property subject to taxation under
- 467 this chapter is 50% or less of the seller's total sales price of that retail sale.
- 468 (c) (i) For purposes of Subsection [~~(16)~~] (18)(a)(i), tangible personal property, a
- 469 product, or a service that is distinct and identifiable does not include:
- 470 (A) packaging that:
- 471 (I) accompanies the sale of the tangible personal property, product, or service; and
- 472 (II) is incidental or immaterial to the sale of the tangible personal property, product, or
- 473 service;
- 474 (B) tangible personal property, a product, or a service provided free of charge with the
- 475 purchase of another item of tangible personal property, a product, or a service; or
- 476 (C) an item of tangible personal property, a product, or a service included in the
- 477 definition of "purchase price."
- 478 (ii) For purposes of Subsection [~~(16)~~] (18)(c)(i)(B), an item of tangible personal
- 479 property, a product, or a service is provided free of charge with the purchase of another item of
- 480 tangible personal property, a product, or a service if the sales price of the purchased item of
- 481 tangible personal property, product, or service does not vary depending on the inclusion of the
- 482 tangible personal property, product, or service provided free of charge.
- 483 (d) (i) For purposes of Subsection [~~(16)~~] (18)(a)(ii), property sold for one nonitemized
- 484 price does not include a price that is separately identified by tangible personal property,
- 485 product, or service on the following, regardless of whether the following is in paper format or
- 486 electronic format:
- 487 (A) a binding sales document; or
- 488 (B) another supporting sales-related document that is available to a purchaser.
- 489 (ii) For purposes of Subsection [~~(16)~~] (18)(d)(i), a binding sales document or another
- 490 supporting sales-related document that is available to a purchaser includes:
- 491 (A) a bill of sale;
- 492 (B) a contract;

- 493 (C) an invoice;
494 (D) a lease agreement;
495 (E) a periodic notice of rates and services;
496 (F) a price list;
497 (G) a rate card;
498 (H) a receipt; or
499 (I) a service agreement.

500 (e) (i) For purposes of Subsection [~~(16)~~] (18)(b)(vi), the sales price of tangible personal
501 property or a product subject to taxation under this chapter is de minimis if:

502 (A) the seller's purchase price of the tangible personal property or product is 10% or
503 less of the seller's total purchase price of the bundled transaction; or

504 (B) the seller's sales price of the tangible personal property or product is 10% or less of
505 the seller's total sales price of the bundled transaction.

506 (ii) For purposes of Subsection [~~(16)~~] (18)(b)(vi), a seller:

507 (A) shall use the seller's purchase price or the seller's sales price to determine if the
508 purchase price or sales price of the tangible personal property or product subject to taxation
509 under this chapter is de minimis; and

510 (B) may not use a combination of the seller's purchase price and the seller's sales price
511 to determine if the purchase price or sales price of the tangible personal property or product
512 subject to taxation under this chapter is de minimis.

513 (iii) For purposes of Subsection [~~(16)~~] (18)(b)(vi), a seller shall use the full term of a
514 service contract to determine if the sales price of tangible personal property or a product is de
515 minimis.

516 (f) For purposes of Subsection [~~(16)~~] (18)(b)(vii)(B), a seller may not use a
517 combination of the seller's purchase price and the seller's sales price to determine if tangible
518 personal property subject to taxation under this chapter is 50% or less of the seller's total
519 purchase price or sales price of that retail sale.

520 [~~(17)~~] (19) "Certified automated system" means software certified by the governing
521 board of the agreement that:

522 (a) calculates the agreement sales and use tax imposed within a local taxing
523 jurisdiction:

524 (i) on a transaction; and
525 (ii) in the states that are members of the agreement;
526 (b) determines the amount of agreement sales and use tax to remit to a state that is a
527 member of the agreement; and
528 (c) maintains a record of the transaction described in Subsection [~~(17)~~] (19)(a)(i).

529 [~~(18)~~] (20) "Certified service provider" means an agent certified:

530 (a) by the governing board of the agreement; and
531 (b) to perform all of a seller's sales and use tax functions for an agreement sales and
532 use tax other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's
533 own purchases.

534 [~~(19)~~] (21) (a) Subject to Subsection [~~(19)~~] (21)(b), "clothing" means all human
535 wearing apparel suitable for general use.

536 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
537 commission shall make rules:

538 (i) listing the items that constitute "clothing"; and
539 (ii) that are consistent with the list of items that constitute "clothing" under the
540 agreement.

541 [~~(20)~~] (22) "Coal-to-liquid" means the process of converting coal into a liquid synthetic
542 fuel.

543 [~~(21)~~] (23) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or
544 other fuels that does not constitute industrial use under Subsection [~~(48)~~] (50) or residential use
545 under Subsection [~~(96)~~] (97).

546 [~~(22)~~] (24) (a) "Common carrier" means a person engaged in or transacting the
547 business of transporting passengers, freight, merchandise, or other property for hire within this
548 state.

549 (b) (i) "Common carrier" does not include a person who, at the time the person is
550 traveling to or from that person's place of employment, transports a passenger to or from the
551 passenger's place of employment.

552 (ii) For purposes of Subsection [~~(22)~~] (24)(b)(i), in accordance with Title 63G, Chapter
553 3, Utah Administrative Rulemaking Act, the commission may make rules defining what
554 constitutes a person's place of employment.

- 555 [~~(23)~~] (25) "Component part" includes:
- 556 (a) poultry, dairy, and other livestock feed, and their components;
- 557 (b) baling ties and twine used in the baling of hay and straw;
- 558 (c) fuel used for providing temperature control of orchards and commercial
- 559 greenhouses doing a majority of their business in wholesale sales, and for providing power for
- 560 off-highway type farm machinery; and
- 561 (d) feed, seeds, and seedlings.
- 562 [~~(24)~~] (26) "Computer" means an electronic device that accepts information:
- 563 (a) (i) in digital form; or
- 564 (ii) in a form similar to digital form; and
- 565 (b) manipulates that information for a result based on a sequence of instructions.
- 566 [~~(25)~~] (27) "Computer software" means a set of coded instructions designed to cause:
- 567 (a) a computer to perform a task; or
- 568 (b) automatic data processing equipment to perform a task.
- 569 [~~(26)~~] (28) (a) "Conference bridging service" means an ancillary service that links two
- 570 or more participants of an audio conference call or video conference call.
- 571 (b) "Conference bridging service" may include providing a telephone number as part of
- 572 the ancillary service described in Subsection [~~(26)~~] (28)(a).
- 573 (c) "Conference bridging service" does not include a telecommunications service used
- 574 to reach the ancillary service described in Subsection [~~(26)~~] (28)(a).
- 575 [~~(27)~~] (29) "Construction materials" means any tangible personal property that will be
- 576 converted into real property.
- 577 [~~(28)~~] (30) "Delivered electronically" means delivered to a purchaser by means other
- 578 than tangible storage media.
- 579 [~~(29)~~] (31) (a) "Delivery charge" means a charge:
- 580 (i) by a seller of:
- 581 (A) tangible personal property;
- 582 (B) a product transferred electronically; or
- 583 (C) services; and
- 584 (ii) for preparation and delivery of the tangible personal property, product transferred
- 585 electronically, or services described in Subsection [~~(29)~~] (31)(a)(i) to a location designated by

586 the purchaser.

587 (b) "Delivery charge" includes a charge for the following:

588 (i) transportation;

589 (ii) shipping;

590 (iii) postage;

591 (iv) handling;

592 (v) crating; or

593 (vi) packing.

594 [~~(30)~~] (32) "Detailed telecommunications billing service" means an ancillary service of
595 separately stating information pertaining to individual calls on a customer's billing statement.

596 [~~(31)~~] (33) "Dietary supplement" means a product, other than tobacco, that:

597 (a) is intended to supplement the diet;

598 (b) contains one or more of the following dietary ingredients:

599 (i) a vitamin;

600 (ii) a mineral;

601 (iii) an herb or other botanical;

602 (iv) an amino acid;

603 (v) a dietary substance for use by humans to supplement the diet by increasing the total
604 dietary intake; or

605 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient

606 described in Subsections [~~(31)~~] (33)(b)(i) through (v);

607 (c) (i) except as provided in Subsection [~~(31)~~] (33)(c)(ii), is intended for ingestion in:

608 (A) tablet form;

609 (B) capsule form;

610 (C) powder form;

611 (D) softgel form;

612 (E) gelcap form; or

613 (F) liquid form; or

614 (ii) notwithstanding Subsection [~~(31)~~] (33)(c)(i), if the product is not intended for
615 ingestion in a form described in Subsections [~~(31)~~] (33)(c)(i)(A) through (F), is not

616 represented:

- 617 (A) as conventional food; and
- 618 (B) for use as a sole item of:
- 619 (I) a meal; or
- 620 (II) the diet; and
- 621 (d) is required to be labeled as a dietary supplement:
- 622 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 623 (ii) as required by 21 C.F.R. Sec. 101.36.
- 624 [~~32~~] (34) (a) "Direct mail" means printed material delivered or distributed by United
- 625 States mail or other delivery service:
- 626 (i) to:
- 627 (A) a mass audience; or
- 628 (B) addressees on a mailing list provided:
- 629 (I) by a purchaser of the mailing list; or
- 630 (II) at the discretion of the purchaser of the mailing list; and
- 631 (ii) if the cost of the printed material is not billed directly to the recipients.
- 632 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 633 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 634 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 635 single address.
- 636 [~~33~~] (35) "Directory assistance" means an ancillary service of providing:
- 637 (a) address information; or
- 638 (b) telephone number information.
- 639 [~~34~~] (36) (a) "Disposable home medical equipment or supplies" means medical
- 640 equipment or supplies that:
- 641 (i) cannot withstand repeated use; and
- 642 (ii) are purchased by, for, or on behalf of a person other than:
- 643 (A) a health care facility as defined in Section 26-21-2;
- 644 (B) a health care provider as defined in Section 78B-3-403;
- 645 (C) an office of a health care provider described in Subsection [~~34~~] (36)(a)(ii)(B); or
- 646 (D) a person similar to a person described in Subsections [~~34~~] (36)(a)(ii)(A) through
- 647 (C).

- 648 (b) "Disposable home medical equipment or supplies" does not include:
- 649 (i) a drug;
- 650 (ii) durable medical equipment;
- 651 (iii) a hearing aid;
- 652 (iv) a hearing aid accessory;
- 653 (v) mobility enhancing equipment; or
- 654 (vi) tangible personal property used to correct impaired vision, including:
- 655 (A) eyeglasses; or
- 656 (B) contact lenses.
- 657 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 658 commission may by rule define what constitutes medical equipment or supplies.
- 659 ~~[(35)]~~ (37) (a) "Drug" means a compound, substance, or preparation, or a component of
- 660 a compound, substance, or preparation that is:
- 661 (i) recognized in:
- 662 (A) the official United States Pharmacopoeia;
- 663 (B) the official Homeopathic Pharmacopoeia of the United States;
- 664 (C) the official National Formulary; or
- 665 (D) a supplement to a publication listed in Subsections ~~[(35)]~~ (37)(a)(i)(A) through
- 666 (C);
- 667 (ii) intended for use in the:
- 668 (A) diagnosis of disease;
- 669 (B) cure of disease;
- 670 (C) mitigation of disease;
- 671 (D) treatment of disease; or
- 672 (E) prevention of disease; or
- 673 (iii) intended to affect:
- 674 (A) the structure of the body; or
- 675 (B) any function of the body.
- 676 (b) "Drug" does not include:
- 677 (i) food and food ingredients;
- 678 (ii) a dietary supplement;

679 (iii) an alcoholic beverage; or
680 (iv) a prosthetic device.
681 ~~[(36)]~~ (38) (a) Except as provided in Subsection ~~[(36)]~~ (38)(c), "durable medical
682 equipment" means equipment that:
683 (i) can withstand repeated use;
684 (ii) is primarily and customarily used to serve a medical purpose;
685 (iii) generally is not useful to a person in the absence of illness or injury; and
686 (iv) is not worn in or on the body.
687 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
688 equipment described in Subsection ~~[(36)]~~ (38)(a).
689 (c) Notwithstanding Subsection ~~[(36)]~~ (38)(a), "durable medical equipment" does not
690 include mobility enhancing equipment.
691 ~~[(37)]~~ (39) "Electronic" means:
692 (a) relating to technology; and
693 (b) having:
694 (i) electrical capabilities;
695 (ii) digital capabilities;
696 (iii) magnetic capabilities;
697 (iv) wireless capabilities;
698 (v) optical capabilities;
699 (vi) electromagnetic capabilities; or
700 (vii) capabilities similar to Subsections ~~[(37)]~~ (39)(b)(i) through (vi).
701 ~~[(38)]~~ (40) "Employee" is as defined in Section 59-10-401.
702 ~~[(39)]~~ (41) "Fixed guideway" means a public transit facility that uses and occupies:
703 (a) rail for the use of public transit; or
704 (b) a separate right-of-way for the use of public transit.
705 ~~[(40)]~~ (42) "Fixed wing turbine powered aircraft" means an aircraft that:
706 (a) is powered by turbine engines;
707 (b) operates on jet fuel; and
708 (c) has wings that are permanently attached to the fuselage of the aircraft.
709 ~~[(41)]~~ (43) "Fixed wireless service" means a telecommunications service that provides

710 radio communication between fixed points.

711 [~~(42)~~] (44) (a) "Food and food ingredients" means substances:

712 (i) regardless of whether the substances are in:

713 (A) liquid form;

714 (B) concentrated form;

715 (C) solid form;

716 (D) frozen form;

717 (E) dried form; or

718 (F) dehydrated form; and

719 (ii) that are:

720 (A) sold for:

721 (I) ingestion by humans; or

722 (II) chewing by humans; and

723 (B) consumed for the substance's:

724 (I) taste; or

725 (II) nutritional value.

726 (b) "Food and food ingredients" includes an item described in Subsection [~~(79)~~]

727 (82)(b)(iii).

728 (c) "Food and food ingredients" does not include:

729 (i) an alcoholic beverage;

730 (ii) tobacco; or

731 (iii) prepared food.

732 [~~(43)~~] (45) (a) "Fundraising sales" means sales:

733 (i) (A) made by a school; or

734 (B) made by a school student;

735 (ii) that are for the purpose of raising funds for the school to purchase equipment,

736 materials, or provide transportation; and

737 (iii) that are part of an officially sanctioned school activity.

738 (b) For purposes of Subsection [~~(43)~~] (45)(a)(iii), "officially sanctioned school activity"

739 means a school activity:

740 (i) that is conducted in accordance with a formal policy adopted by the school or school

741 district governing the authorization and supervision of fundraising activities;

742 (ii) that does not directly or indirectly compensate an individual teacher or other
743 educational personnel by direct payment, commissions, or payment in kind; and

744 (iii) the net or gross revenues from which are deposited in a dedicated account
745 controlled by the school or school district.

746 [~~44~~] (46) "Geothermal energy" means energy contained in heat that continuously
747 flows outward from the earth that is used as the sole source of energy to produce electricity.

748 [~~45~~] (47) "Governing board of the agreement" means the governing board of the
749 agreement that is:

750 (a) authorized to administer the agreement; and

751 (b) established in accordance with the agreement.

752 [~~46~~] (48) (a) For purposes of Subsection 59-12-104(41), "governmental entity"
753 means:

754 (i) the executive branch of the state, including all departments, institutions, boards,
755 divisions, bureaus, offices, commissions, and committees;

756 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
757 Office of the Court Administrator, and similar administrative units in the judicial branch;

758 (iii) the legislative branch of the state, including the House of Representatives, the
759 Senate, the Legislative Printing Office, the Office of Legislative Research and General
760 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
761 Analyst;

762 (iv) the National Guard;

763 (v) an independent entity as defined in Section 63E-1-102; or

764 (vi) a political subdivision as defined in Section 17B-1-102.

765 (b) "Governmental entity" does not include the state systems of public and higher
766 education, including:

767 (i) a college campus of the Utah College of Applied Technology;

768 (ii) a school;

769 (iii) the State Board of Education;

770 (iv) the State Board of Regents; or

771 (v) an institution of higher education.

772 [~~(47)~~] (49) "Hydroelectric energy" means water used as the sole source of energy to
773 produce electricity.

774 [~~(48)~~] (50) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,
775 or other fuels:

776 (a) in mining or extraction of minerals;

777 (b) in agricultural operations to produce an agricultural product up to the time of
778 harvest or placing the agricultural product into a storage facility, including:

779 (i) commercial greenhouses;

780 (ii) irrigation pumps;

781 (iii) farm machinery;

782 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
783 registered under Title 41, Chapter 1a, Part 2, Registration; and

784 (v) other farming activities;

785 (c) in manufacturing tangible personal property at an establishment described in SIC
786 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
787 Executive Office of the President, Office of Management and Budget;

788 (d) by a scrap recycler if:

789 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
790 one or more of the following items into prepared grades of processed materials for use in new
791 products:

792 (A) iron;

793 (B) steel;

794 (C) nonferrous metal;

795 (D) paper;

796 (E) glass;

797 (F) plastic;

798 (G) textile; or

799 (H) rubber; and

800 (ii) the new products under Subsection [~~(48)~~] (50)(d)(i) would otherwise be made with
801 nonrecycled materials; or

802 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a

803 cogeneration facility as defined in Section 54-2-1.

804 ~~[(49)]~~ (51) (a) Except as provided in Subsection ~~[(49)]~~ (51)(b), "installation charge"

805 means a charge for installing:

806 (i) tangible personal property; or

807 (ii) a product transferred electronically.

808 (b) "Installation charge" does not include a charge for:

809 (i) repairs or renovations of:

810 (A) tangible personal property; or

811 (B) a product transferred electronically; or

812 (ii) attaching tangible personal property or a product transferred electronically:

813 (A) to other tangible personal property; and

814 (B) as part of a manufacturing or fabrication process.

815 ~~[(50)]~~ (52) "Institution of higher education" means an institution of higher education

816 listed in Section 53B-2-101.

817 ~~[(51)]~~ (53) (a) "Lease" or "rental" means a transfer of possession or control of tangible

818 personal property or a product transferred electronically for:

819 (i) (A) a fixed term; or

820 (B) an indeterminate term; and

821 (ii) consideration.

822 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the

823 amount of consideration may be increased or decreased by reference to the amount realized

824 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue

825 Code.

826 (c) "Lease" or "rental" does not include:

827 (i) a transfer of possession or control of property under a security agreement or

828 deferred payment plan that requires the transfer of title upon completion of the required

829 payments;

830 (ii) a transfer of possession or control of property under an agreement that requires the

831 transfer of title:

832 (A) upon completion of required payments; and

833 (B) if the payment of an option price does not exceed the greater of:

- 834 (I) \$100; or
- 835 (II) 1% of the total required payments; or
- 836 (iii) providing tangible personal property along with an operator for a fixed period of
- 837 time or an indeterminate period of time if the operator is necessary for equipment to perform as
- 838 designed.
- 839 (d) For purposes of Subsection [~~(51)~~] (53)(c)(iii), an operator is necessary for
- 840 equipment to perform as designed if the operator's duties exceed the:
- 841 (i) set-up of tangible personal property;
- 842 (ii) maintenance of tangible personal property; or
- 843 (iii) inspection of tangible personal property.
- 844 [~~(52)~~] (54) "Load and leave" means delivery to a purchaser by use of a tangible storage
- 845 media if the tangible storage media is not physically transferred to the purchaser.
- 846 [~~(53)~~] (55) "Local taxing jurisdiction" means a:
- 847 (a) county that is authorized to impose an agreement sales and use tax;
- 848 (b) city that is authorized to impose an agreement sales and use tax; or
- 849 (c) town that is authorized to impose an agreement sales and use tax.
- 850 [~~(54)~~] (56) "Manufactured home" is as defined in Section 15A-1-302.
- 851 [~~(55)~~] (57) For purposes of Section 59-12-104, "manufacturing facility" means:
- 852 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 853 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 854 Management and Budget;
- 855 (b) a scrap recycler if:
- 856 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 857 one or more of the following items into prepared grades of processed materials for use in new
- 858 products:
- 859 (A) iron;
- 860 (B) steel;
- 861 (C) nonferrous metal;
- 862 (D) paper;
- 863 (E) glass;
- 864 (F) plastic;

865 (G) textile; or
866 (H) rubber; and
867 (ii) the new products under Subsection [~~(55)~~] (57)(b)(i) would otherwise be made with
868 nonrecycled materials; or

869 (c) a cogeneration facility as defined in Section 54-2-1.

870 [~~(56)~~] (58) "Member of the immediate family of the producer" means a person who is
871 related to a producer described in Subsection 59-12-104(20)(a) as a:

872 (a) child or stepchild, regardless of whether the child or stepchild is:

873 (i) an adopted child or adopted stepchild; or

874 (ii) a foster child or foster stepchild;

875 (b) grandchild or stepgrandchild;

876 (c) grandparent or stepgrandparent;

877 (d) nephew or stepnephew;

878 (e) niece or stepniece;

879 (f) parent or stepparent;

880 (g) sibling or stepsibling;

881 (h) spouse;

882 (i) person who is the spouse of a person described in Subsections [~~(56)~~] (58)(a) through
883 (g); or

884 (j) person similar to a person described in Subsections [~~(56)~~] (58)(a) through (i) as
885 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
886 Administrative Rulemaking Act.

887 [~~(57)~~] (59) "Mobile home" is as defined in Section 15A-1-302.

888 [~~(58)~~] (60) "Mobile telecommunications service" is as defined in the Mobile
889 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

890 [~~(59)~~] (61) (a) "Mobile wireless service" means a telecommunications service,
891 regardless of the technology used, if:

892 (i) the origination point of the conveyance, routing, or transmission is not fixed;

893 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or

894 (iii) the origination point described in Subsection [~~(59)~~] (61)(a)(i) and the termination
895 point described in Subsection [~~(59)~~] (61)(a)(ii) are not fixed.

896 (b) "Mobile wireless service" includes a telecommunications service that is provided
897 by a commercial mobile radio service provider.

898 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
899 commission may by rule define "commercial mobile radio service provider."

900 ~~[(60)]~~ (62) (a) Except as provided in Subsection ~~[(60)]~~ (62)(c), "mobility enhancing
901 equipment" means equipment that is:

902 (i) primarily and customarily used to provide or increase the ability to move from one
903 place to another;

904 (ii) appropriate for use in a:

905 (A) home; or

906 (B) motor vehicle; and

907 (iii) not generally used by persons with normal mobility.

908 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
909 the equipment described in Subsection ~~[(60)]~~ (62)(a).

910 (c) Notwithstanding Subsection ~~[(60)]~~ (62)(a), "mobility enhancing equipment" does
911 not include:

912 (i) a motor vehicle;

913 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
914 vehicle manufacturer;

915 (iii) durable medical equipment; or

916 (iv) a prosthetic device.

917 ~~[(61)]~~ (63) "Model 1 seller" means a seller registered under the agreement that has
918 selected a certified service provider as the seller's agent to perform all of the seller's sales and
919 use tax functions for agreement sales and use taxes other than the seller's obligation under
920 Section 59-12-124 to remit a tax on the seller's own purchases.

921 ~~[(62)]~~ (64) "Model 2 seller" means a seller registered under the agreement that:

922 (a) except as provided in Subsection ~~[(62)]~~ (64)(b), has selected a certified automated
923 system to perform the seller's sales tax functions for agreement sales and use taxes; and

924 (b) notwithstanding Subsection ~~[(62)]~~ (64)(a), retains responsibility for remitting all of
925 the sales tax:

926 (i) collected by the seller; and

927 (ii) to the appropriate local taxing jurisdiction.

928 ~~[(63)]~~ (65) (a) Subject to Subsection ~~[(63)]~~ (65)(b), "model 3 seller" means a seller
929 registered under the agreement that has:

930 (i) sales in at least five states that are members of the agreement;

931 (ii) total annual sales revenues of at least \$500,000,000;

932 (iii) a proprietary system that calculates the amount of tax:

933 (A) for an agreement sales and use tax; and

934 (B) due to each local taxing jurisdiction; and

935 (iv) entered into a performance agreement with the governing board of the agreement.

936 (b) For purposes of Subsection ~~[(63)]~~ (65)(a), "model 3 seller" includes an affiliated
937 group of sellers using the same proprietary system.

938 ~~[(64)]~~ (66) "Model 4 seller" means a seller that is registered under the agreement and is
939 not a model 1 seller, model 2 seller, or model 3 seller.

940 ~~[(65)]~~ (67) "Modular home" means a modular unit as defined in Section 15A-1-302.

941 ~~[(66)]~~ (68) "Motor vehicle" is as defined in Section 41-1a-102.

942 (69) "Oil sands" means impregnated bituminous sands that:

943 (a) contain a heavy, thick form of petroleum that is released when heated, mixed with
944 other hydrocarbons, or otherwise treated;

945 (b) yield mixtures of liquid hydrocarbon; and

946 (c) require further processing other than mechanical blending before becoming finished
947 petroleum products.

948 ~~[(67)]~~ (70) "Oil shale" means a group of fine black to dark brown shales containing
949 ~~[bituminous]~~ kerogen material that yields petroleum upon heating and distillation.

950 ~~[(68)]~~ (71) (a) "Other fuels" means products that burn independently to produce heat or
951 energy.

952 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
953 personal property.

954 ~~[(69)]~~ (72) (a) "Paging service" means a telecommunications service that provides
955 transmission of a coded radio signal for the purpose of activating a specific pager.

956 (b) For purposes of Subsection ~~[(69)]~~ (72)(a), the transmission of a coded radio signal
957 includes a transmission by message or sound.

958 [~~(70)~~] (73) "Pawnbroker" is as defined in Section 13-32a-102.
959 [~~(71)~~] (74) "Pawn transaction" is as defined in Section 13-32a-102.
960 [~~(72)~~] (75) (a) "Permanently attached to real property" means that for tangible personal
961 property attached to real property:
962 (i) the attachment of the tangible personal property to the real property:
963 (A) is essential to the use of the tangible personal property; and
964 (B) suggests that the tangible personal property will remain attached to the real
965 property in the same place over the useful life of the tangible personal property; or
966 (ii) if the tangible personal property is detached from the real property, the detachment
967 would:
968 (A) cause substantial damage to the tangible personal property; or
969 (B) require substantial alteration or repair of the real property to which the tangible
970 personal property is attached.
971 (b) "Permanently attached to real property" includes:
972 (i) the attachment of an accessory to the tangible personal property if the accessory is:
973 (A) essential to the operation of the tangible personal property; and
974 (B) attached only to facilitate the operation of the tangible personal property;
975 (ii) a temporary detachment of tangible personal property from real property for a
976 repair or renovation if the repair or renovation is performed where the tangible personal
977 property and real property are located; or
978 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
979 Subsection [~~(72)~~] (75)(c)(iii) or (iv).
980 (c) "Permanently attached to real property" does not include:
981 (i) the attachment of portable or movable tangible personal property to real property if
982 that portable or movable tangible personal property is attached to real property only for:
983 (A) convenience;
984 (B) stability; or
985 (C) for an obvious temporary purpose;
986 (ii) the detachment of tangible personal property from real property except for the
987 detachment described in Subsection [~~(72)~~] (75)(b)(ii);
988 (iii) an attachment of the following tangible personal property to real property if the

989 attachment to real property is only through a line that supplies water, electricity, gas,
990 telecommunications, cable, or supplies a similar item as determined by the commission by rule
991 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

992 (A) a computer;

993 (B) a telephone;

994 (C) a television; or

995 (D) tangible personal property similar to Subsections [~~(72)~~] (75)(c)(iii)(A) through (C)

996 as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah

997 Administrative Rulemaking Act; or

998 (iv) an item listed in Subsection [~~(113)~~] (114)(c).

999 [~~(73)~~] (76) "Person" includes any individual, firm, partnership, joint venture,
1000 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,
1001 city, municipality, district, or other local governmental entity of the state, or any group or
1002 combination acting as a unit.

1003 [~~(74)~~] (77) "Place of primary use":

1004 (a) for telecommunications service other than mobile telecommunications service,
1005 means the street address representative of where the customer's use of the telecommunications
1006 service primarily occurs, which shall be:

1007 (i) the residential street address of the customer; or

1008 (ii) the primary business street address of the customer; or

1009 (b) for mobile telecommunications service, is as defined in the Mobile
1010 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

1011 [~~(75)~~] (78) (a) "Postpaid calling service" means a telecommunications service a person
1012 obtains by making a payment on a call-by-call basis:

1013 (i) through the use of a:

1014 (A) bank card;

1015 (B) credit card;

1016 (C) debit card; or

1017 (D) travel card; or

1018 (ii) by a charge made to a telephone number that is not associated with the origination
1019 or termination of the telecommunications service.

1020 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
1021 service, that would be a prepaid wireless calling service if the service were exclusively a
1022 telecommunications service.

1023 [~~(76)~~] (79) "Postproduction" means an activity related to the finishing or duplication of
1024 a medium described in Subsection 59-12-104(54)(a).

1025 [~~(77)~~] (80) "Prepaid calling service" means a telecommunications service:

1026 (a) that allows a purchaser access to telecommunications service that is exclusively
1027 telecommunications service;

1028 (b) that:

1029 (i) is paid for in advance; and

1030 (ii) enables the origination of a call using an:

1031 (A) access number; or

1032 (B) authorization code;

1033 (c) that is dialed:

1034 (i) manually; or

1035 (ii) electronically; and

1036 (d) sold in predetermined units or dollars that decline:

1037 (i) by a known amount; and

1038 (ii) with use.

1039 [~~(78)~~] (81) "Prepaid wireless calling service" means a telecommunications service:

1040 (a) that provides the right to utilize:

1041 (i) mobile wireless service; and

1042 (ii) other service that is not a telecommunications service, including:

1043 (A) the download of a product transferred electronically;

1044 (B) a content service; or

1045 (C) an ancillary service;

1046 (b) that:

1047 (i) is paid for in advance; and

1048 (ii) enables the origination of a call using an:

1049 (A) access number; or

1050 (B) authorization code;

- 1051 (c) that is dialed:
- 1052 (i) manually; or
- 1053 (ii) electronically; and
- 1054 (d) sold in predetermined units or dollars that decline:
- 1055 (i) by a known amount; and
- 1056 (ii) with use.
- 1057 [~~(79)~~] (82) (a) "Prepared food" means:
- 1058 (i) food:
- 1059 (A) sold in a heated state; or
- 1060 (B) heated by a seller;
- 1061 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 1062 item; or
- 1063 (iii) except as provided in Subsection [~~(79)~~] (82)(c), food sold with an eating utensil
- 1064 provided by the seller, including a:
- 1065 (A) plate;
- 1066 (B) knife;
- 1067 (C) fork;
- 1068 (D) spoon;
- 1069 (E) glass;
- 1070 (F) cup;
- 1071 (G) napkin; or
- 1072 (H) straw.
- 1073 (b) "Prepared food" does not include:
- 1074 (i) food that a seller only:
- 1075 (A) cuts;
- 1076 (B) repackages; or
- 1077 (C) pasteurizes; or
- 1078 (ii) (A) the following:
- 1079 (I) raw egg;
- 1080 (II) raw fish;
- 1081 (III) raw meat;

- 1082 (IV) raw poultry; or
- 1083 (V) a food containing an item described in Subsections [~~(79)~~] (82)(b)(ii)(A)(I) through
- 1084 (IV); and
- 1085 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 1086 Food and Drug Administration's Food Code that a consumer cook the items described in
- 1087 Subsection [~~(79)~~] (82)(b)(ii)(A) to prevent food borne illness; or
- 1088 (iii) the following if sold without eating utensils provided by the seller:
- 1089 (A) food and food ingredients sold by a seller if the seller's proper primary
- 1090 classification under the 2002 North American Industry Classification System of the federal
- 1091 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 1092 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 1093 Manufacturing;
- 1094 (B) food and food ingredients sold in an unheated state:
- 1095 (I) by weight or volume; and
- 1096 (II) as a single item; or
- 1097 (C) a bakery item, including:
- 1098 (I) a bagel;
- 1099 (II) a bar;
- 1100 (III) a biscuit;
- 1101 (IV) bread;
- 1102 (V) a bun;
- 1103 (VI) a cake;
- 1104 (VII) a cookie;
- 1105 (VIII) a croissant;
- 1106 (IX) a danish;
- 1107 (X) a donut;
- 1108 (XI) a muffin;
- 1109 (XII) a pastry;
- 1110 (XIII) a pie;
- 1111 (XIV) a roll;
- 1112 (XV) a tart;

1113 (XVI) a torte; or
1114 (XVII) a tortilla.
1115 (c) Notwithstanding Subsection [~~(79)~~] (82)(a)(iii), an eating utensil provided by the
1116 seller does not include the following used to transport the food:
1117 (i) a container; or
1118 (ii) packaging.
1119 [~~(80)~~] (83) "Prescription" means an order, formula, or recipe that is issued:
1120 (a) (i) orally;
1121 (ii) in writing;
1122 (iii) electronically; or
1123 (iv) by any other manner of transmission; and
1124 (b) by a licensed practitioner authorized by the laws of a state.
1125 [~~(81)~~] (84) (a) Except as provided in Subsection [~~(81)~~] (84)(b)(ii) or (iii), "prewritten
1126 computer software" means computer software that is not designed and developed:
1127 (i) by the author or other creator of the computer software; and
1128 (ii) to the specifications of a specific purchaser.
1129 (b) "Prewritten computer software" includes:
1130 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
1131 software is not designed and developed:
1132 (A) by the author or other creator of the computer software; and
1133 (B) to the specifications of a specific purchaser;
1134 (ii) notwithstanding Subsection [~~(81)~~] (84)(a), computer software designed and
1135 developed by the author or other creator of the computer software to the specifications of a
1136 specific purchaser if the computer software is sold to a person other than the purchaser; or
1137 (iii) notwithstanding Subsection [~~(81)~~] (84)(a) and except as provided in Subsection
1138 [~~(81)~~](84)(c), prewritten computer software or a prewritten portion of prewritten computer
1139 software:
1140 (A) that is modified or enhanced to any degree; and
1141 (B) if the modification or enhancement described in Subsection [~~(81)~~] (84)(b)(iii)(A) is
1142 designed and developed to the specifications of a specific purchaser.
1143 (c) Notwithstanding Subsection [~~(81)~~] (84)(b)(iii), "prewritten computer software"

1144 does not include a modification or enhancement described in Subsection [~~(81)~~] (84)(b)(iii) if
1145 the charges for the modification or enhancement are:

- 1146 (i) reasonable; and
- 1147 (ii) separately stated on the invoice or other statement of price provided to the
1148 purchaser.

1149 [~~(82)~~] (85) (a) "Private communication service" means a telecommunications service:

- 1150 (i) that entitles a customer to exclusive or priority use of one or more communications
1151 channels between or among termination points; and
- 1152 (ii) regardless of the manner in which the one or more communications channels are
1153 connected.

1154 (b) "Private communications service" includes the following provided in connection
1155 with the use of one or more communications channels:

- 1156 (i) an extension line;
- 1157 (ii) a station;
- 1158 (iii) switching capacity; or
- 1159 (iv) another associated service that is provided in connection with the use of one or
1160 more communications channels as defined in Section 59-12-215.

1161 [~~(83)~~] (86) (a) Except as provided in Subsection [~~(83)~~] (86)(b), "product transferred
1162 electronically" means a product transferred electronically that would be subject to a tax under
1163 this chapter if that product was transferred in a manner other than electronically.

1164 (b) "Product transferred electronically" does not include:

- 1165 (i) an ancillary service;
- 1166 (ii) computer software; or
- 1167 (iii) a telecommunications service.

1168 [~~(84)~~] (87) (a) "Prosthetic device" means a device that is worn on or in the body to:

- 1169 (i) artificially replace a missing portion of the body;
- 1170 (ii) prevent or correct a physical deformity or physical malfunction; or
- 1171 (iii) support a weak or deformed portion of the body.

1172 (b) "Prosthetic device" includes:

- 1173 (i) parts used in the repairs or renovation of a prosthetic device;
- 1174 (ii) replacement parts for a prosthetic device;

- 1175 (iii) a dental prosthesis; or
- 1176 (iv) a hearing aid.
- 1177 (c) "Prosthetic device" does not include:
- 1178 (i) corrective eyeglasses; or
- 1179 (ii) contact lenses.
- 1180 [~~85~~] (88) (a) "Protective equipment" means an item:
- 1181 (i) for human wear; and
- 1182 (ii) that is:
- 1183 (A) designed as protection:
- 1184 (I) to the wearer against injury or disease; or
- 1185 (II) against damage or injury of other persons or property; and
- 1186 (B) not suitable for general use.
- 1187 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1188 commission shall make rules:
- 1189 (i) listing the items that constitute "protective equipment"; and
- 1190 (ii) that are consistent with the list of items that constitute "protective equipment"
- 1191 under the agreement.
- 1192 [~~86~~] (89) (a) For purposes of Subsection 59-12-104(41), "publication" means any
- 1193 written or printed matter, other than a photocopy:
- 1194 (i) regardless of:
- 1195 (A) characteristics;
- 1196 (B) copyright;
- 1197 (C) form;
- 1198 (D) format;
- 1199 (E) method of reproduction; or
- 1200 (F) source; and
- 1201 (ii) made available in printed or electronic format.
- 1202 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1203 commission may by rule define the term "photocopy."
- 1204 [~~87~~] (90) (a) "Purchase price" and "sales price" mean the total amount of
- 1205 consideration:

- 1206 (i) valued in money; and
- 1207 (ii) for which tangible personal property, a product transferred electronically, or
- 1208 services are:
 - 1209 (A) sold;
 - 1210 (B) leased; or
 - 1211 (C) rented.
- 1212 (b) "Purchase price" and "sales price" include:
 - 1213 (i) the seller's cost of the tangible personal property, a product transferred
 - 1214 electronically, or services sold;
 - 1215 (ii) expenses of the seller, including:
 - 1216 (A) the cost of materials used;
 - 1217 (B) a labor cost;
 - 1218 (C) a service cost;
 - 1219 (D) interest;
 - 1220 (E) a loss;
 - 1221 (F) the cost of transportation to the seller; or
 - 1222 (G) a tax imposed on the seller;
 - 1223 (iii) a charge by the seller for any service necessary to complete the sale; or
 - 1224 (iv) consideration a seller receives from a person other than the purchaser if:
 - 1225 (A) (I) the seller actually receives consideration from a person other than the purchaser;
 - 1226 and
 - 1227 (II) the consideration described in Subsection [~~(87)~~] (90)(b)(iv)(A)(I) is directly related
 - 1228 to a price reduction or discount on the sale;
 - 1229 (B) the seller has an obligation to pass the price reduction or discount through to the
 - 1230 purchaser;
 - 1231 (C) the amount of the consideration attributable to the sale is fixed and determinable by
 - 1232 the seller at the time of the sale to the purchaser; and
 - 1233 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
 - 1234 seller to claim a price reduction or discount; and
 - 1235 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
 - 1236 coupon, or other documentation with the understanding that the person other than the seller

1237 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

1238 (II) the purchaser identifies that purchaser to the seller as a member of a group or
1239 organization allowed a price reduction or discount, except that a preferred customer card that is
1240 available to any patron of a seller does not constitute membership in a group or organization
1241 allowed a price reduction or discount; or

1242 (III) the price reduction or discount is identified as a third party price reduction or
1243 discount on the:

1244 (Aa) invoice the purchaser receives; or

1245 (Bb) certificate, coupon, or other documentation the purchaser presents.

1246 (c) "Purchase price" and "sales price" do not include:

1247 (i) a discount:

1248 (A) in a form including:

1249 (I) cash;

1250 (II) term; or

1251 (III) coupon;

1252 (B) that is allowed by a seller;

1253 (C) taken by a purchaser on a sale; and

1254 (D) that is not reimbursed by a third party; or

1255 (ii) the following if separately stated on an invoice, bill of sale, or similar document
1256 provided to the purchaser:

1257 (A) the following from credit extended on the sale of tangible personal property or
1258 services:

1259 (I) a carrying charge;

1260 (II) a financing charge; or

1261 (III) an interest charge;

1262 (B) a delivery charge;

1263 (C) an installation charge;

1264 (D) a manufacturer rebate on a motor vehicle; or

1265 (E) a tax or fee legally imposed directly on the consumer.

1266 [~~88~~] (91) "Purchaser" means a person to whom:

1267 (a) a sale of tangible personal property is made;

1268 (b) a product is transferred electronically; or

1269 (c) a service is furnished.

1270 ~~[(89)]~~ (92) "Regularly rented" means:

1271 (a) rented to a guest for value three or more times during a calendar year; or

1272 (b) advertised or held out to the public as a place that is regularly rented to guests for
1273 value.

1274 ~~[(90) "Renewable energy" means:]~~

1275 ~~[(a) biomass energy;]~~

1276 ~~[(b) hydroelectric energy;]~~

1277 ~~[(c) geothermal energy;]~~

1278 ~~[(d) solar energy; or]~~

1279 ~~[(e) wind energy.]~~

1280 ~~[(91) (a) "Renewable energy production facility" means a facility that:]~~

1281 ~~[(i) uses renewable energy to produce electricity; and]~~

1282 ~~[(ii) has a production capacity of 20 kilowatts or greater.]~~

1283 ~~[(b) A facility is a renewable energy production facility regardless of whether the~~
1284 ~~facility is:]~~

1285 ~~[(i) connected to an electric grid; or]~~

1286 ~~[(ii) located on the premises of an electricity consumer.]~~

1287 ~~[(92)]~~ (93) "Rental" is as defined in Subsection ~~[(51)]~~ (53).

1288 ~~[(93)]~~ (94) (a) Except as provided in Subsection ~~[(93)]~~ (94)(b), "repairs or renovations
1289 of tangible personal property" means:

1290 (i) a repair or renovation of tangible personal property that is not permanently attached
1291 to real property; or

1292 (ii) attaching tangible personal property or a product transferred electronically to other
1293 tangible personal property if:

1294 (A) the other tangible personal property to which the tangible personal property or
1295 product transferred electronically is attached is not permanently attached to real property; and

1296 (B) the attachment of tangible personal property or a product transferred electronically
1297 to other tangible personal property is made in conjunction with a repair or replacement of
1298 tangible personal property or a product transferred electronically.

1299 (b) "Repairs or renovations of tangible personal property" does not include attaching
1300 prewritten computer software to other tangible personal property if the other tangible personal
1301 property to which the prewritten computer software is attached is not permanently attached to
1302 real property.

1303 [~~(94)~~] (95) "Research and development" means the process of inquiry or
1304 experimentation aimed at the discovery of facts, devices, technologies, or applications and the
1305 process of preparing those devices, technologies, or applications for marketing.

1306 [~~(95)~~] (96) (a) "Residential telecommunications services" means a telecommunications
1307 service or an ancillary service that is provided to an individual for personal use:

1308 (i) at a residential address; or

1309 (ii) at an institution, including a nursing home or a school, if the telecommunications
1310 service or ancillary service is provided to and paid for by the individual residing at the
1311 institution rather than the institution.

1312 (b) For purposes of Subsection [~~(95)~~] (96)(a)(i), a residential address includes an:

1313 (i) apartment; or

1314 (ii) other individual dwelling unit.

1315 [~~(96)~~] (97) "Residential use" means the use in or around a home, apartment building,
1316 sleeping quarters, and similar facilities or accommodations.

1317 [~~(97)~~] (98) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
1318 other than:

1319 (a) resale;

1320 (b) sublease; or

1321 (c) subrent.

1322 [~~(98)~~] (99) (a) "Retailer" means any person engaged in a regularly organized business
1323 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),
1324 and who is selling to the user or consumer and not for resale.

1325 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1326 engaged in the business of selling to users or consumers within the state.

1327 [~~(99)~~] (100) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1328 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1329 Subsection 59-12-103(1), for consideration.

- 1330 (b) "Sale" includes:
- 1331 (i) installment and credit sales;
- 1332 (ii) any closed transaction constituting a sale;
- 1333 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
- 1334 chapter;
- 1335 (iv) any transaction if the possession of property is transferred but the seller retains the
- 1336 title as security for the payment of the price; and
- 1337 (v) any transaction under which right to possession, operation, or use of any article of
- 1338 tangible personal property is granted under a lease or contract and the transfer of possession
- 1339 would be taxable if an outright sale were made.
- 1340 [~~(100)~~] (101) "Sale at retail" is as defined in Subsection [~~(97)~~] (98).
- 1341 [~~(101)~~] (102) "Sale-leaseback transaction" means a transaction by which title to
- 1342 tangible personal property or a product transferred electronically that is subject to a tax under
- 1343 this chapter is transferred:
- 1344 (a) by a purchaser-lessee;
- 1345 (b) to a lessor;
- 1346 (c) for consideration; and
- 1347 (d) if:
- 1348 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
- 1349 of the tangible personal property or product transferred electronically;
- 1350 (ii) the sale of the tangible personal property or product transferred electronically to the
- 1351 lessor is intended as a form of financing:
- 1352 (A) for the tangible personal property or product transferred electronically; and
- 1353 (B) to the purchaser-lessee; and
- 1354 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
- 1355 is required to:
- 1356 (A) capitalize the tangible personal property or product transferred electronically for
- 1357 financial reporting purposes; and
- 1358 (B) account for the lease payments as payments made under a financing arrangement.
- 1359 [~~(102)~~] (103) "Sales price" is as defined in Subsection [~~(87)~~] (90).
- 1360 [~~(103)~~] (104) (a) "Sales relating to schools" means the following sales by, amounts

- 1361 paid to, or amounts charged by a school:
- 1362 (i) sales that are directly related to the school's educational functions or activities
- 1363 including:
- 1364 (A) the sale of:
- 1365 (I) textbooks;
- 1366 (II) textbook fees;
- 1367 (III) laboratory fees;
- 1368 (IV) laboratory supplies; or
- 1369 (V) safety equipment;
- 1370 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
- 1371 that:
- 1372 (I) a student is specifically required to wear as a condition of participation in a
- 1373 school-related event or school-related activity; and
- 1374 (II) is not readily adaptable to general or continued usage to the extent that it takes the
- 1375 place of ordinary clothing;
- 1376 (C) sales of the following if the net or gross revenues generated by the sales are
- 1377 deposited into a school district fund or school fund dedicated to school meals:
- 1378 (I) food and food ingredients; or
- 1379 (II) prepared food; or
- 1380 (D) transportation charges for official school activities; or
- 1381 (ii) amounts paid to or amounts charged by a school for admission to a school-related
- 1382 event or school-related activity.
- 1383 (b) "Sales relating to schools" does not include:
- 1384 (i) bookstore sales of items that are not educational materials or supplies;
- 1385 (ii) except as provided in Subsection [~~(103)~~] (104)(a)(i)(B):
- 1386 (A) clothing;
- 1387 (B) clothing accessories or equipment;
- 1388 (C) protective equipment; or
- 1389 (D) sports or recreational equipment; or
- 1390 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1391 event or school-related activity if the amounts paid or charged are passed through to a person:

- 1392 (A) other than a:
- 1393 (I) school;
- 1394 (II) nonprofit organization authorized by a school board or a governing body of a
- 1395 private school to organize and direct a competitive secondary school activity; or
- 1396 (III) nonprofit association authorized by a school board or a governing body of a
- 1397 private school to organize and direct a competitive secondary school activity; and
- 1398 (B) that is required to collect sales and use taxes under this chapter.
- 1399 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1400 commission may make rules defining the term "passed through."
- 1401 [~~(104)~~] (105) For purposes of this section and Section 59-12-104, "school":
- 1402 (a) means:
- 1403 (i) an elementary school or a secondary school that:
- 1404 (A) is a:
- 1405 (I) public school; or
- 1406 (II) private school; and
- 1407 (B) provides instruction for one or more grades kindergarten through 12; or
- 1408 (ii) a public school district; and
- 1409 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 1410 [~~(105)~~] (106) "Seller" means a person that makes a sale, lease, or rental of:
- 1411 (a) tangible personal property;
- 1412 (b) a product transferred electronically; or
- 1413 (c) a service.
- 1414 [~~(106)~~] (107) (a) "Semiconductor fabricating, processing, research, or development
- 1415 materials" means tangible personal property or a product transferred electronically if the
- 1416 tangible personal property or product transferred electronically is:
- 1417 (i) used primarily in the process of:
- 1418 (A) (I) manufacturing a semiconductor;
- 1419 (II) fabricating a semiconductor; or
- 1420 (III) research or development of a:
- 1421 (Aa) semiconductor; or
- 1422 (Bb) semiconductor manufacturing process; or

- 1423 (B) maintaining an environment suitable for a semiconductor; or
- 1424 (ii) consumed primarily in the process of:
- 1425 (A) (I) manufacturing a semiconductor;
- 1426 (II) fabricating a semiconductor; or
- 1427 (III) research or development of a:
- 1428 (Aa) semiconductor; or
- 1429 (Bb) semiconductor manufacturing process; or
- 1430 (B) maintaining an environment suitable for a semiconductor.
- 1431 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1432 includes:
- 1433 (i) parts used in the repairs or renovations of tangible personal property or a product
- 1434 transferred electronically described in Subsection [~~(106)~~] (107)(a); or
- 1435 (ii) a chemical, catalyst, or other material used to:
- 1436 (A) produce or induce in a semiconductor a:
- 1437 (I) chemical change; or
- 1438 (II) physical change;
- 1439 (B) remove impurities from a semiconductor; or
- 1440 (C) improve the marketable condition of a semiconductor.
- 1441 [~~(107)~~] (108) "Senior citizen center" means a facility having the primary purpose of
- 1442 providing services to the aged as defined in Section 62A-3-101.
- 1443 [~~(108)~~] (109) "Simplified electronic return" means the electronic return:
- 1444 (a) described in Section 318(C) of the agreement; and
- 1445 (b) approved by the governing board of the agreement.
- 1446 [~~(109)~~] (110) "Solar energy" means the sun used as the sole source of energy for
- 1447 producing electricity.
- 1448 [~~(110)~~] (111) (a) "Sports or recreational equipment" means an item:
- 1449 (i) designed for human use; and
- 1450 (ii) that is:
- 1451 (A) worn in conjunction with:
- 1452 (I) an athletic activity; or
- 1453 (II) a recreational activity; and

1454 (B) not suitable for general use.

1455 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1456 commission shall make rules:

1457 (i) listing the items that constitute "sports or recreational equipment"; and

1458 (ii) that are consistent with the list of items that constitute "sports or recreational
1459 equipment" under the agreement.

1460 [~~(H1)~~] (112) "State" means the state of Utah, its departments, and agencies.

1461 [~~(H2)~~] (113) "Storage" means any keeping or retention of tangible personal property or
1462 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
1463 except sale in the regular course of business.

1464 [~~(H3)~~] (114) (a) Except as provided in Subsection [~~(H3)~~] (114)(d) or (e), "tangible
1465 personal property" means personal property that:

1466 (i) may be:

1467 (A) seen;

1468 (B) weighed;

1469 (C) measured;

1470 (D) felt; or

1471 (E) touched; or

1472 (ii) is in any manner perceptible to the senses.

1473 (b) "Tangible personal property" includes:

1474 (i) electricity;

1475 (ii) water;

1476 (iii) gas;

1477 (iv) steam; or

1478 (v) prewritten computer software, regardless of the manner in which the prewritten
1479 computer software is transferred.

1480 (c) "Tangible personal property" includes the following regardless of whether the item
1481 is attached to real property:

1482 (i) a dishwasher;

1483 (ii) a dryer;

1484 (iii) a freezer;

1485 (iv) a microwave;
1486 (v) a refrigerator;
1487 (vi) a stove;
1488 (vii) a washer; or
1489 (viii) an item similar to Subsections ~~[(113)]~~ (114)(c)(i) through (vii) as determined by
1490 the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1491 Rulemaking Act.

1492 (d) "Tangible personal property" does not include a product that is transferred
1493 electronically.

1494 (e) "Tangible personal property" does not include the following if attached to real
1495 property, regardless of whether the attachment to real property is only through a line that
1496 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
1497 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1498 Rulemaking Act:

- 1499 (i) a hot water heater;
- 1500 (ii) a water filtration system; or
- 1501 (iii) a water softener system.

1502 ~~[(114) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon~~
1503 ~~and require further processing other than mechanical blending before becoming finished~~
1504 ~~petroleum products.]~~

1505 (115) (a) "Telecommunications enabling or facilitating equipment, machinery, or
1506 software" means an item listed in Subsection (115)(b) if that item is purchased or leased
1507 primarily to enable or facilitate one or more of the following to function:

- 1508 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1509 (ii) telecommunications transmission equipment, machinery, or software.

1510 (b) The following apply to Subsection (115)(a):

- 1511 (i) a pole;
- 1512 (ii) software;
- 1513 (iii) a supplementary power supply;
- 1514 (iv) temperature or environmental equipment or machinery;
- 1515 (v) test equipment;

1516 (vi) a tower; or
1517 (vii) equipment, machinery, or software that functions similarly to an item listed in
1518 Subsections (115)(b)(i) through (vi) as determined by the commission by rule made in
1519 accordance with Subsection (115)(c).

1520 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1521 commission may by rule define what constitutes equipment, machinery, or software that
1522 functions similarly to an item listed in Subsections (115)(b)(i) through (vi).

1523 (116) "Telecommunications equipment, machinery, or software required for 911
1524 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
1525 Sec. 20.18.

1526 (117) "Telecommunications maintenance or repair equipment, machinery, or software"
1527 means equipment, machinery, or software purchased or leased primarily to maintain or repair
1528 one or more of the following, regardless of whether the equipment, machinery, or software is
1529 purchased or leased as a spare part or as an upgrade or modification to one or more of the
1530 following:

- 1531 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1532 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1533 (c) telecommunications transmission equipment, machinery, or software.

1534 (118) (a) "Telecommunications service" means the electronic conveyance, routing, or
1535 transmission of audio, data, video, voice, or any other information or signal to a point, or
1536 among or between points.

1537 (b) "Telecommunications service" includes:

1538 (i) an electronic conveyance, routing, or transmission with respect to which a computer
1539 processing application is used to act:

- 1540 (A) on the code, form, or protocol of the content;
- 1541 (B) for the purpose of electronic conveyance, routing, or transmission; and
- 1542 (C) regardless of whether the service:

1543 (I) is referred to as voice over Internet protocol service; or

1544 (II) is classified by the Federal Communications Commission as enhanced or value
1545 added;

1546 (ii) an 800 service;

- 1547 (iii) a 900 service;
- 1548 (iv) a fixed wireless service;
- 1549 (v) a mobile wireless service;
- 1550 (vi) a postpaid calling service;
- 1551 (vii) a prepaid calling service;
- 1552 (viii) a prepaid wireless calling service; or
- 1553 (ix) a private communications service.
- 1554 (c) "Telecommunications service" does not include:
- 1555 (i) advertising, including directory advertising;
- 1556 (ii) an ancillary service;
- 1557 (iii) a billing and collection service provided to a third party;
- 1558 (iv) a data processing and information service if:
- 1559 (A) the data processing and information service allows data to be:
- 1560 (I) (Aa) acquired;
- 1561 (Bb) generated;
- 1562 (Cc) processed;
- 1563 (Dd) retrieved; or
- 1564 (Ee) stored; and
- 1565 (II) delivered by an electronic transmission to a purchaser; and
- 1566 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1567 or information;
- 1568 (v) installation or maintenance of the following on a customer's premises:
- 1569 (A) equipment; or
- 1570 (B) wiring;
- 1571 (vi) Internet access service;
- 1572 (vii) a paging service;
- 1573 (viii) a product transferred electronically, including:
- 1574 (A) music;
- 1575 (B) reading material;
- 1576 (C) a ring tone;
- 1577 (D) software; or

- 1578 (E) video;
- 1579 (ix) a radio and television audio and video programming service:
- 1580 (A) regardless of the medium; and
- 1581 (B) including:
- 1582 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1583 programming service by a programming service provider;
- 1584 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1585 (III) audio and video programming services delivered by a commercial mobile radio
- 1586 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1587 (x) a value-added nonvoice data service; or
- 1588 (xi) tangible personal property.
- 1589 (119) (a) "Telecommunications service provider" means a person that:
- 1590 (i) owns, controls, operates, or manages a telecommunications service; and
- 1591 (ii) engages in an activity described in Subsection (119)(a)(i) for the shared use with or
- 1592 resale to any person of the telecommunications service.
- 1593 (b) A person described in Subsection (119)(a) is a telecommunications service provider
- 1594 whether or not the Public Service Commission of Utah regulates:
- 1595 (i) that person; or
- 1596 (ii) the telecommunications service that the person owns, controls, operates, or
- 1597 manages.
- 1598 (120) (a) "Telecommunications switching or routing equipment, machinery, or
- 1599 software" means an item listed in Subsection (120)(b) if that item is purchased or leased
- 1600 primarily for switching or routing:
- 1601 (i) an ancillary service;
- 1602 (ii) data communications;
- 1603 (iii) voice communications; or
- 1604 (iv) telecommunications service.
- 1605 (b) The following apply to Subsection (120)(a):
- 1606 (i) a bridge;
- 1607 (ii) a computer;
- 1608 (iii) a cross connect;

- 1609 (iv) a modem;
- 1610 (v) a multiplexer;
- 1611 (vi) plug in circuitry;
- 1612 (vii) a router;
- 1613 (viii) software;
- 1614 (ix) a switch; or
- 1615 (x) equipment, machinery, or software that functions similarly to an item listed in
- 1616 Subsections (120)(b)(i) through (ix) as determined by the commission by rule made in
- 1617 accordance with Subsection (120)(c).

1618 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1619 commission may by rule define what constitutes equipment, machinery, or software that

1620 functions similarly to an item listed in Subsections (120)(b)(i) through (ix).

1621 (121) (a) "Telecommunications transmission equipment, machinery, or software"

1622 means an item listed in Subsection (121)(b) if that item is purchased or leased primarily for

1623 sending, receiving, or transporting:

- 1624 (i) an ancillary service;
 - 1625 (ii) data communications;
 - 1626 (iii) voice communications; or
 - 1627 (iv) telecommunications service.
- 1628 (b) The following apply to Subsection (121)(a):
- 1629 (i) an amplifier;
 - 1630 (ii) a cable;
 - 1631 (iii) a closure;
 - 1632 (iv) a conduit;
 - 1633 (v) a controller;
 - 1634 (vi) a duplexer;
 - 1635 (vii) a filter;
 - 1636 (viii) an input device;
 - 1637 (ix) an input/output device;
 - 1638 (x) an insulator;
 - 1639 (xi) microwave machinery or equipment;

- 1640 (xii) an oscillator;
- 1641 (xiii) an output device;
- 1642 (xiv) a pedestal;
- 1643 (xv) a power converter;
- 1644 (xvi) a power supply;
- 1645 (xvii) a radio channel;
- 1646 (xviii) a radio receiver;
- 1647 (xix) a radio transmitter;
- 1648 (xx) a repeater;
- 1649 (xxi) software;
- 1650 (xxii) a terminal;
- 1651 (xxiii) a timing unit;
- 1652 (xxiv) a transformer;
- 1653 (xxv) a wire; or

1654 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
1655 Subsections (121)(b)(i) through (xxv) as determined by the commission by rule made in
1656 accordance with Subsection (121)(c).

1657 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1658 commission may by rule define what constitutes equipment, machinery, or software that
1659 functions similarly to an item listed in Subsections (121)(b)(i) through (xxv).

1660 (122) (a) "Textbook for a higher education course" means a textbook or other printed
1661 material that is required for a course:

- 1662 (i) offered by an institution of higher education; and
 - 1663 (ii) that the purchaser of the textbook or other printed material attends or will attend.
- 1664 (b) "Textbook for a higher education course" includes a textbook in electronic format.

1665 (123) "Tobacco" means:

- 1666 (a) a cigarette;
- 1667 (b) a cigar;
- 1668 (c) chewing tobacco;
- 1669 (d) pipe tobacco; or
- 1670 (e) any other item that contains tobacco.

1671 (124) "Unassisted amusement device" means an amusement device, skill device, or
1672 ride device that is started and stopped by the purchaser or renter of the right to use or operate
1673 the amusement device, skill device, or ride device.

1674 (125) (a) "Use" means the exercise of any right or power over tangible personal
1675 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
1676 incident to the ownership or the leasing of that tangible personal property, product transferred
1677 electronically, or service.

1678 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1679 property, a product transferred electronically, or a service in the regular course of business and
1680 held for resale.

1681 (126) "Value-added nonvoice data service" means a service:

1682 (a) that otherwise meets the definition of a telecommunications service except that a
1683 computer processing application is used to act primarily for a purpose other than conveyance,
1684 routing, or transmission; and

1685 (b) with respect to which a computer processing application is used to act on data or
1686 information:

- 1687 (i) code;
- 1688 (ii) content;
- 1689 (iii) form; or
- 1690 (iv) protocol.

1691 (127) (a) Subject to Subsection (127)(b), "vehicle" means the following that are
1692 required to be titled, registered, or titled and registered:

- 1693 (i) an aircraft as defined in Section 72-10-102;
- 1694 (ii) a vehicle as defined in Section 41-1a-102;
- 1695 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1696 (iv) a vessel as defined in Section 41-1a-102.

1697 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 1698 (i) a vehicle described in Subsection (127)(a); or
- 1699 (ii) (A) a locomotive;
- 1700 (B) a freight car;
- 1701 (C) railroad work equipment; or

- 1702 (D) other railroad rolling stock.
- 1703 (128) "Vehicle dealer" means a person engaged in the business of buying, selling, or
1704 exchanging a vehicle as defined in Subsection (127).
- 1705 (129) (a) "Vertical service" means an ancillary service that:
- 1706 (i) is offered in connection with one or more telecommunications services; and
- 1707 (ii) offers an advanced calling feature that allows a customer to:
- 1708 (A) identify a caller; and
- 1709 (B) manage multiple calls and call connections.
- 1710 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
1711 conference bridging service.
- 1712 (130) (a) "Voice mail service" means an ancillary service that enables a customer to
1713 receive, send, or store a recorded message.
- 1714 (b) "Voice mail service" does not include a vertical service that a customer is required
1715 to have in order to utilize a voice mail service.
- 1716 (131) (a) Except as provided in Subsection (131)(b), "waste energy facility" means a
1717 facility that generates electricity:
- 1718 (i) using as the primary source of energy waste materials that would be placed in a
1719 landfill or refuse pit if it were not used to generate electricity, including:
- 1720 (A) tires;
- 1721 (B) waste coal; [~~or~~]
- 1722 (C) oil shale; [~~and~~] or
- 1723 (D) municipal solid waste; and
- 1724 (ii) in amounts greater than actually required for the operation of the facility.
- 1725 (b) "Waste energy facility" does not include a facility that incinerates:
- 1726 [~~(i) municipal solid waste;~~]
- 1727 [~~(ii)~~] (i) hospital waste as defined in 40 C.F.R. 60.51c; or
- 1728 [~~(iii)~~] (ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
- 1729 (132) "Watercraft" means a vessel as defined in Section 73-18-2.
- 1730 (133) "Wind energy" means wind used as the sole source of energy to produce
1731 electricity.
- 1732 (134) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic

1733 location by the United States Postal Service.

1734 Section 7. Section **59-12-104** is amended to read:

1735 **59-12-104. Exemptions.**

1736 The following sales and uses are exempt from the taxes imposed by this chapter:

1737 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
1738 under Chapter 13, Motor and Special Fuel Tax Act;

1739 (2) subject to Section 59-12-104.6, sales to the state, its institutions, and its political
1740 subdivisions; however, this exemption does not apply to sales of:

1741 (a) construction materials except:

1742 (i) construction materials purchased by or on behalf of institutions of the public
1743 education system as defined in Utah Constitution Article X, Section 2, provided the
1744 construction materials are clearly identified and segregated and installed or converted to real
1745 property which is owned by institutions of the public education system; and

1746 (ii) construction materials purchased by the state, its institutions, or its political
1747 subdivisions which are installed or converted to real property by employees of the state, its
1748 institutions, or its political subdivisions; or

1749 (b) tangible personal property in connection with the construction, operation,
1750 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
1751 providing additional project capacity, as defined in Section 11-13-103;

1752 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

1753 (i) the proceeds of each sale do not exceed \$1; and

1754 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
1755 the cost of the item described in Subsection (3)(b) as goods consumed; and

1756 (b) Subsection (3)(a) applies to:

1757 (i) food and food ingredients; or

1758 (ii) prepared food;

1759 (4) (a) sales of the following to a commercial airline carrier for in-flight consumption:

1760 (i) alcoholic beverages;

1761 (ii) food and food ingredients; or

1762 (iii) prepared food;

1763 (b) sales of tangible personal property or a product transferred electronically:

1764 (i) to a passenger;
1765 (ii) by a commercial airline carrier; and
1766 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or
1767 (c) services related to Subsection (4)(a) or (b);
1768 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts
1769 and equipment:

1770 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002
1771 North American Industry Classification System of the federal Executive Office of the
1772 President, Office of Management and Budget; and

1773 (II) for:

1774 (Aa) installation in an aircraft, including services relating to the installation of parts or
1775 equipment in the aircraft;

1776 (Bb) renovation of an aircraft; or

1777 (Cc) repair of an aircraft; or

1778 (B) for installation in an aircraft operated by a common carrier in interstate or foreign
1779 commerce; or

1780 (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an
1781 aircraft operated by a common carrier in interstate or foreign commerce; and

1782 (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
1783 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a
1784 refund:

1785 (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;

1786 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;

1787 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for
1788 the sale prior to filing for the refund;

1789 (iv) for sales and use taxes paid under this chapter on the sale;

1790 (v) in accordance with Section 59-1-1410; and

1791 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
1792 the person files for the refund on or before September 30, 2011;

1793 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
1794 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture

1795 exhibitor, distributor, or commercial television or radio broadcaster;

1796 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
1797 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
1798 washing of tangible personal property;

1799 (b) if a seller that sells at the same business location assisted cleaning or washing of
1800 tangible personal property and cleaning or washing of tangible personal property that is not
1801 assisted cleaning or washing of tangible personal property, the exemption described in
1802 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
1803 or washing of the tangible personal property; and

1804 (c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3,
1805 Utah Administrative Rulemaking Act, the commission may make rules:

1806 (i) governing the circumstances under which sales are at the same business location;
1807 and

1808 (ii) establishing the procedures and requirements for a seller to separately account for
1809 sales of assisted cleaning or washing of tangible personal property;

1810 (8) sales made to or by religious or charitable institutions in the conduct of their regular
1811 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
1812 fulfilled;

1813 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of
1814 this state if the vehicle is:

1815 (a) not registered in this state; and

1816 (b) (i) not used in this state; or

1817 (ii) used in this state:

1818 (A) if the vehicle is not used to conduct business, for a time period that does not
1819 exceed the longer of:

1820 (I) 30 days in any calendar year; or

1821 (II) the time period necessary to transport the vehicle to the borders of this state; or

1822 (B) if the vehicle is used to conduct business, for the time period necessary to transport
1823 the vehicle to the borders of this state;

1824 (10) (a) amounts paid for an item described in Subsection (10)(b) if:

1825 (i) the item is intended for human use; and

- 1826 (ii) (A) a prescription was issued for the item; or
- 1827 (B) the item was purchased by a hospital or other medical facility; and
- 1828 (b) (i) Subsection (10)(a) applies to:
- 1829 (A) a drug;
- 1830 (B) a syringe; or
- 1831 (C) a stoma supply; and
- 1832 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1833 commission may by rule define the terms:
- 1834 (A) "syringe"; or
- 1835 (B) "stoma supply";
- 1836 (11) sales or use of property, materials, or services used in the construction of or
- 1837 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
- 1838 (12) (a) sales of an item described in Subsection (12)(c) served by:
- 1839 (i) the following if the item described in Subsection (12)(c) is not available to the
- 1840 general public:
- 1841 (A) a church; or
- 1842 (B) a charitable institution;
- 1843 (ii) an institution of higher education if:
- 1844 (A) the item described in Subsection (12)(c) is not available to the general public; or
- 1845 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
- 1846 offered by the institution of higher education; or
- 1847 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
- 1848 (i) a medical facility; or
- 1849 (ii) a nursing facility; and
- 1850 (c) Subsections (12)(a) and (b) apply to:
- 1851 (i) food and food ingredients;
- 1852 (ii) prepared food; or
- 1853 (iii) alcoholic beverages;
- 1854 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
- 1855 or a product transferred electronically by a person:
- 1856 (i) regardless of the number of transactions involving the sale of that tangible personal

1857 property or product transferred electronically by that person; and
1858 (ii) not regularly engaged in the business of selling that type of tangible personal
1859 property or product transferred electronically;
1860 (b) this Subsection (13) does not apply if:
1861 (i) the sale is one of a series of sales of a character to indicate that the person is
1862 regularly engaged in the business of selling that type of tangible personal property or product
1863 transferred electronically;
1864 (ii) the person holds that person out as regularly engaged in the business of selling that
1865 type of tangible personal property or product transferred electronically;
1866 (iii) the person sells an item of tangible personal property or product transferred
1867 electronically that the person purchased as a sale that is exempt under Subsection (25); or
1868 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
1869 this state in which case the tax is based upon:
1870 (A) the bill of sale or other written evidence of value of the vehicle or vessel being
1871 sold; or
1872 (B) in the absence of a bill of sale or other written evidence of value, the fair market
1873 value of the vehicle or vessel being sold at the time of the sale as determined by the
1874 commission; and
1875 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1876 commission shall make rules establishing the circumstances under which:
1877 (i) a person is regularly engaged in the business of selling a type of tangible personal
1878 property or product transferred electronically;
1879 (ii) a sale of tangible personal property or a product transferred electronically is one of
1880 a series of sales of a character to indicate that a person is regularly engaged in the business of
1881 selling that type of tangible personal property or product transferred electronically; or
1882 (iii) a person holds that person out as regularly engaged in the business of selling a type
1883 of tangible personal property or product transferred electronically;
1884 (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after
1885 July 1, 2006, for a purchase or lease by a manufacturing facility except for a cogeneration
1886 facility, of the following:
1887 (i) machinery and equipment that:

1888 (A) are used:

1889 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
1890 recycler described in Subsection 59-12-102[~~(55)~~](57)(b):

1891 (Aa) in the manufacturing process;

1892 (Bb) to manufacture an item sold as tangible personal property; and

1893 (Cc) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
1894 (14)(a)(i)(A)(I) in the state; or

1895 (II) for a manufacturing facility that is a scrap recycler described in Subsection
1896 59-12-102[~~(55)~~](57)(b):

1897 (Aa) to process an item sold as tangible personal property; and

1898 (Bb) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
1899 (14)(a)(i)(A)(II) in the state; and

1900 (B) have an economic life of three or more years; and

1901 (ii) normal operating repair or replacement parts that:

1902 (A) have an economic life of three or more years; and

1903 (B) are used:

1904 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
1905 recycler described in Subsection 59-12-102[~~(55)~~](57)(b):

1906 (Aa) in the manufacturing process; and

1907 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in the
1908 state; or

1909 (II) for a manufacturing facility that is a scrap recycler described in Subsection
1910 59-12-102[~~(55)~~](57)(b):

1911 (Aa) to process an item sold as tangible personal property; and

1912 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the
1913 state;

1914 (b) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a
1915 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,
1916 of the following:

1917 (i) machinery and equipment that:

1918 (A) are used:

- 1919 (I) in the manufacturing process;
- 1920 (II) to manufacture an item sold as tangible personal property; and
- 1921 (III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
- 1922 (14)(b) in the state; and
- 1923 (B) have an economic life of three or more years; and
- 1924 (ii) normal operating repair or replacement parts that:
- 1925 (A) are used:
- 1926 (I) in the manufacturing process; and
- 1927 (II) in a manufacturing facility described in this Subsection (14)(b) in the state; and
- 1928 (B) have an economic life of three or more years;
- 1929 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,
- 1930 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or
- 1931 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for
- 1932 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,
- 1933 of the 2002 North American Industry Classification System of the federal Executive Office of
- 1934 the President, Office of Management and Budget, of the following:
- 1935 (i) machinery and equipment that:
- 1936 (A) are used:
- 1937 (I) (Aa) in the production process, other than the production of real property; or
- 1938 (Bb) in research and development; and
- 1939 (II) beginning on July 1, 2009, in an establishment described in this Subsection (14)(c)
- 1940 in the state; and
- 1941 (B) have an economic life of three or more years; and
- 1942 (ii) normal operating repair or replacement parts that:
- 1943 (A) have an economic life of three or more years; and
- 1944 (B) are used in:
- 1945 (I) (Aa) the production process, except for the production of real property; and
- 1946 (Bb) an establishment described in this Subsection (14)(c) in the state; or
- 1947 (II) (Aa) research and development; and
- 1948 (Bb) in an establishment described in this Subsection (14)(c) in the state;
- 1949 (d) (i) amounts paid or charged for a purchase or lease made on or after July 1, 2010,

1950 but on or before June 30, 2014, by an establishment described in NAICS Code 518112, Web
1951 Search Portals, of the 2002 North American Industry Classification System of the federal
1952 Executive Office of the President, Office of Management and Budget, of the following:

1953 (A) machinery and equipment that:

1954 (I) are used in the operation of the web search portal;

1955 (II) have an economic life of three or more years; and

1956 (III) are used in a new or expanding establishment described in this Subsection (14)(d)

1957 in the state; and

1958 (B) normal operating repair or replacement parts that:

1959 (I) are used in the operation of the web search portal;

1960 (II) have an economic life of three or more years; and

1961 (III) are used in a new or expanding establishment described in this Subsection (14)(d)

1962 in the state; or

1963 (ii) amounts paid or charged for a purchase or lease made on or after July 1, 2014, by

1964 an establishment described in NAICS Code 518112, Web Search Portals, of the 2002 North

1965 American Industry Classification System of the federal Executive Office of the President,

1966 Office of Management and Budget, of the following:

1967 (A) machinery and equipment that:

1968 (I) are used in the operation of the web search portal; and

1969 (II) have an economic life of three or more years; and

1970 (B) normal operating repair or replacement parts that:

1971 (I) are used in the operation of the web search portal; and

1972 (II) have an economic life of three or more years;

1973 (e) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,

1974 Utah Administrative Rulemaking Act, the commission:

1975 (i) shall by rule define the term "establishment"; and

1976 (ii) may by rule define what constitutes:

1977 (A) processing an item sold as tangible personal property;

1978 (B) the production process, except for the production of real property;

1979 (C) research and development; or

1980 (D) a new or expanding establishment described in Subsection (14)(d) in the state; and

1981 (f) on or before October 1, 2011, and every five years after October 1, 2011, the
1982 commission shall:

1983 (i) review the exemptions described in this Subsection (14) and make
1984 recommendations to the Revenue and Taxation Interim Committee concerning whether the
1985 exemptions should be continued, modified, or repealed; and

1986 (ii) include in its report:

1987 (A) an estimate of the cost of the exemptions;

1988 (B) the purpose and effectiveness of the exemptions; and

1989 (C) the benefits of the exemptions to the state;

1990 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:

1991 (i) tooling;

1992 (ii) special tooling;

1993 (iii) support equipment;

1994 (iv) special test equipment; or

1995 (v) parts used in the repairs or renovations of tooling or equipment described in
1996 Subsections (15)(a)(i) through (iv); and

1997 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

1998 (i) the tooling, equipment, or parts are used or consumed exclusively in the
1999 performance of any aerospace or electronics industry contract with the United States
2000 government or any subcontract under that contract; and

2001 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
2002 title to the tooling, equipment, or parts is vested in the United States government as evidenced
2003 by:

2004 (A) a government identification tag placed on the tooling, equipment, or parts; or

2005 (B) listing on a government-approved property record if placing a government
2006 identification tag on the tooling, equipment, or parts is impractical;

2007 (16) sales of newspapers or newspaper subscriptions;

2008 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a
2009 product transferred electronically traded in as full or part payment of the purchase price, except
2010 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,
2011 trade-ins are limited to other vehicles only, and the tax is based upon:

2012 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
2013 vehicle being traded in; or

2014 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
2015 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
2016 commission; and

2017 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the
2018 following items of tangible personal property or products transferred electronically traded in as
2019 full or part payment of the purchase price:

2020 (i) money;

2021 (ii) electricity;

2022 (iii) water;

2023 (iv) gas; or

2024 (v) steam;

2025 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property
2026 or a product transferred electronically used or consumed primarily and directly in farming
2027 operations, regardless of whether the tangible personal property or product transferred
2028 electronically:

2029 (A) becomes part of real estate; or

2030 (B) is installed by a:

2031 (I) farmer;

2032 (II) contractor; or

2033 (III) subcontractor; or

2034 (ii) sales of parts used in the repairs or renovations of tangible personal property or a
2035 product transferred electronically if the tangible personal property or product transferred
2036 electronically is exempt under Subsection (18)(a)(i); and

2037 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following are
2038 subject to the taxes imposed by this chapter:

2039 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is
2040 incidental to farming:

2041 (I) machinery;

2042 (II) equipment;

2043 (III) materials; or
2044 (IV) supplies; and
2045 (B) tangible personal property that is considered to be used in a manner that is
2046 incidental to farming includes:
2047 (I) hand tools; or
2048 (II) maintenance and janitorial equipment and supplies;
2049 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product
2050 transferred electronically if the tangible personal property or product transferred electronically
2051 is used in an activity other than farming; and
2052 (B) tangible personal property or a product transferred electronically that is considered
2053 to be used in an activity other than farming includes:
2054 (I) office equipment and supplies; or
2055 (II) equipment and supplies used in:
2056 (Aa) the sale or distribution of farm products;
2057 (Bb) research; or
2058 (Cc) transportation; or
2059 (iii) a vehicle required to be registered by the laws of this state during the period
2060 ending two years after the date of the vehicle's purchase;
2061 (19) sales of hay;
2062 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
2063 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
2064 garden, farm, or other agricultural produce is sold by:
2065 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
2066 agricultural produce;
2067 (b) an employee of the producer described in Subsection (20)(a); or
2068 (c) a member of the immediate family of the producer described in Subsection (20)(a);
2069 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
2070 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;;
2071 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
2072 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
2073 wholesaler, or retailer for use in packaging tangible personal property to be sold by that

2074 manufacturer, processor, wholesaler, or retailer;

2075 (23) a product stored in the state for resale;

2076 (24) (a) purchases of a product if:

2077 (i) the product is:

2078 (A) purchased outside of this state;

2079 (B) brought into this state:

2080 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and

2081 (II) by a nonresident person who is not living or working in this state at the time of the

2082 purchase;

2083 (C) used for the personal use or enjoyment of the nonresident person described in

2084 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and

2085 (D) not used in conducting business in this state; and

2086 (ii) for:

2087 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of

2088 the product for a purpose for which the product is designed occurs outside of this state;

2089 (B) a boat, the boat is registered outside of this state; or

2090 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered

2091 outside of this state;

2092 (b) the exemption provided for in Subsection (24)(a) does not apply to:

2093 (i) a lease or rental of a product; or

2094 (ii) a sale of a vehicle exempt under Subsection (33); and

2095 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for

2096 purposes of Subsection (24)(a), the commission may by rule define what constitutes the

2097 following:

2098 (i) conducting business in this state if that phrase has the same meaning in this

2099 Subsection (24) as in Subsection (63);

2100 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)

2101 as in Subsection (63); or

2102 (iii) a purpose for which a product is designed if that phrase has the same meaning in

2103 this Subsection (24) as in Subsection (63);

2104 (25) a product purchased for resale in this state, in the regular course of business, either

2105 in its original form or as an ingredient or component part of a manufactured or compounded
2106 product;

2107 (26) a product upon which a sales or use tax was paid to some other state, or one of its
2108 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
2109 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
2110 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
2111 Act;

2112 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
2113 person for use in compounding a service taxable under the subsections;

2114 (28) purchases made in accordance with the special supplemental nutrition program for
2115 women, infants, and children established in 42 U.S.C. Sec. 1786;

2116 (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,
2117 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
2118 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
2119 Manual of the federal Executive Office of the President, Office of Management and Budget;

2120 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State
2121 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:

2122 (a) not registered in this state; and

2123 (b) (i) not used in this state; or

2124 (ii) used in this state:

2125 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a
2126 time period that does not exceed the longer of:

2127 (I) 30 days in any calendar year; or

2128 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to
2129 the borders of this state; or

2130 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
2131 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
2132 state;

2133 (31) sales of aircraft manufactured in Utah;

2134 (32) amounts paid for the purchase of telecommunications service for purposes of
2135 providing telecommunications service;

- 2136 (33) sales, leases, or uses of the following:
- 2137 (a) a vehicle by an authorized carrier; or
- 2138 (b) tangible personal property that is installed on a vehicle:
- 2139 (i) sold or leased to or used by an authorized carrier; and
- 2140 (ii) before the vehicle is placed in service for the first time;
- 2141 (34) (a) 45% of the sales price of any new manufactured home; and
- 2142 (b) 100% of the sales price of any used manufactured home;
- 2143 (35) sales relating to schools and fundraising sales;
- 2144 (36) sales or rentals of durable medical equipment if:
- 2145 (a) a person presents a prescription for the durable medical equipment; and
- 2146 (b) the durable medical equipment is used for home use only;
- 2147 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
- 2148 Section 72-11-102; and
- 2149 (b) the commission shall by rule determine the method for calculating sales exempt
- 2150 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
- 2151 (38) sales to a ski resort of:
- 2152 (a) snowmaking equipment;
- 2153 (b) ski slope grooming equipment;
- 2154 (c) passenger ropeways as defined in Section 72-11-102; or
- 2155 (d) parts used in the repairs or renovations of equipment or passenger ropeways
- 2156 described in Subsections (38)(a) through (c);
- 2157 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
- 2158 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
- 2159 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
- 2160 59-12-102;
- 2161 (b) if a seller that sells or rents at the same business location the right to use or operate
- 2162 for amusement, entertainment, or recreation one or more unassisted amusement devices and
- 2163 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
- 2164 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
- 2165 amusement, entertainment, or recreation for the assisted amusement devices; and
- 2166 (c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3,

2167 Utah Administrative Rulemaking Act, the commission may make rules:
2168 (i) governing the circumstances under which sales are at the same business location;
2169 and
2170 (ii) establishing the procedures and requirements for a seller to separately account for
2171 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
2172 assisted amusement devices;

2173 (41) (a) sales of photocopies by:
2174 (i) a governmental entity; or
2175 (ii) an entity within the state system of public education, including:
2176 (A) a school; or
2177 (B) the State Board of Education; or
2178 (b) sales of publications by a governmental entity;

2179 (42) amounts paid for admission to an athletic event at an institution of higher
2180 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
2181 20 U.S.C. Sec. 1681 et seq.;

2182 (43) (a) sales made to or by:
2183 (i) an area agency on aging; or
2184 (ii) a senior citizen center owned by a county, city, or town; or
2185 (b) sales made by a senior citizen center that contracts with an area agency on aging;

2186 (44) sales or leases of semiconductor fabricating, processing, research, or development
2187 materials regardless of whether the semiconductor fabricating, processing, research, or
2188 development materials:
2189 (a) actually come into contact with a semiconductor; or
2190 (b) ultimately become incorporated into real property;

2191 (45) an amount paid by or charged to a purchaser for accommodations and services
2192 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
2193 59-12-104.2;

2194 (46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
2195 sports event registration certificate in accordance with Section 41-3-306 for the event period
2196 specified on the temporary sports event registration certificate;

2197 (47) (a) sales or uses of electricity, if the sales or uses are[~~:(a)~~] made under a tariff

2198 adopted by the Public Service Commission of Utah only for purchase of electricity produced
2199 from a new [~~wind, geothermal, biomass, or solar power~~] alternative energy source, as
2200 designated in the tariff by the Public Service Commission of Utah; and

2201 [~~(b) for an amount of electricity that is:]~~

2202 [~~(i) unrelated to the amount of electricity used by the person purchasing the electricity~~
2203 ~~under the tariff described in Subsection (47)(a); and]~~

2204 [~~(ii) equivalent to the number of kilowatthours specified in the tariff described in~~
2205 ~~Subsection (47)(a) that may be purchased under the tariff described in Subsection (47)(a);]~~

2206 (b) the exemption under Subsection (47)(a) applies to the portion of the tariff rate a
2207 customer pays under the tariff described in Subsection (47)(a) that exceeds the tariff rate under
2208 the tariff described in Subsection (47)(a) that the customer would have paid absent the tariff;

2209 (48) sales or rentals of mobility enhancing equipment if a person presents a
2210 prescription for the mobility enhancing equipment;

2211 (49) sales of water in a:

2212 (a) pipe;

2213 (b) conduit;

2214 (c) ditch; or

2215 (d) reservoir;

2216 (50) sales of currency or coinage that constitute legal tender of the United States or of a
2217 foreign nation;

2218 (51) (a) sales of an item described in Subsection (51)(b) if the item:

2219 (i) does not constitute legal tender of any nation; and

2220 (ii) has a gold, silver, or platinum content of 80% or more; and

2221 (b) Subsection (51)(a) applies to a gold, silver, or platinum:

2222 (i) ingot;

2223 (ii) bar;

2224 (iii) medallion; or

2225 (iv) decorative coin;

2226 (52) amounts paid on a sale-leaseback transaction;

2227 (53) sales of a prosthetic device:

2228 (a) for use on or in a human; and

2229 (b) (i) for which a prescription is required; or
2230 (ii) if the prosthetic device is purchased by a hospital or other medical facility;
2231 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of
2232 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
2233 or equipment is primarily used in the production or postproduction of the following media for
2234 commercial distribution:
2235 (i) a motion picture;
2236 (ii) a television program;
2237 (iii) a movie made for television;
2238 (iv) a music video;
2239 (v) a commercial;
2240 (vi) a documentary; or
2241 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the
2242 commission by administrative rule made in accordance with Subsection (54)(d); or
2243 (b) notwithstanding Subsection (54)(a), purchases, leases, or rentals of machinery or
2244 equipment by an establishment described in Subsection (54)(c) that is used for the production
2245 or postproduction of the following are subject to the taxes imposed by this chapter:
2246 (i) a live musical performance;
2247 (ii) a live news program; or
2248 (iii) a live sporting event;
2249 (c) the following establishments listed in the 1997 North American Industry
2250 Classification System of the federal Executive Office of the President, Office of Management
2251 and Budget, apply to Subsections (54)(a) and (b):
2252 (i) NAICS Code 512110; or
2253 (ii) NAICS Code 51219; and
2254 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2255 commission may by rule:
2256 (i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi);
2257 or
2258 (ii) define:
2259 (A) "commercial distribution";

- 2260 (B) "live musical performance";
- 2261 (C) "live news program"; or
- 2262 (D) "live sporting event";
- 2263 (55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
- 2264 on or before June 30, ~~[2019]~~ 2027, of ~~[machinery or equipment]~~ tangible personal property
- 2265 that:
- 2266 (i) is leased or purchased for or by a facility that:
- 2267 (A) is ~~[a-renewable]~~ an alternative energy electricity production facility;
- 2268 (B) is located in the state; and
- 2269 (C) (I) becomes operational on or after July 1, 2004; or
- 2270 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 2271 2004, as a result of the use of the ~~[machinery or equipment]~~ tangible personal property;
- 2272 (ii) has an economic life of five or more years; and
- 2273 (iii) is used to make the facility or the increase in capacity of the facility described in
- 2274 Subsection (55)(a)(i) operational up to the point of interconnection with an existing
- 2275 transmission grid including:
- 2276 (A) a wind turbine;
- 2277 (B) generating equipment;
- 2278 (C) a control and monitoring system;
- 2279 (D) a power line;
- 2280 (E) substation equipment;
- 2281 (F) lighting;
- 2282 (G) fencing;
- 2283 (H) pipes; or
- 2284 (I) other equipment used for locating a power line or pole; and
- 2285 (b) this Subsection (55) does not apply to:
- 2286 (i) ~~[machinery or equipment]~~ tangible personal property used in construction of:
- 2287 (A) a new ~~[renewable]~~ alternative energy electricity production facility; or
- 2288 (B) the increase in the capacity of ~~[a-renewable]~~ an alternative energy electricity
- 2289 production facility;
- 2290 (ii) contracted services required for construction and routine maintenance activities;

2291 and

2292 (iii) unless the [~~machinery or equipment~~] tangible personal property is used or acquired
2293 for an increase in capacity of the facility described in Subsection (55)(a)(i)(C)(II), [~~machinery~~
2294 ~~or equipment~~] tangible personal property used or acquired after:

2295 (A) the [~~renewable~~] alternative energy electricity production facility described in
2296 Subsection (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or

2297 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described
2298 in Subsection (55)(a)(iii);

2299 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
2300 on or before June 30, [~~2019~~] 2027, of [~~machinery or equipment~~] tangible personal property
2301 that:

2302 (i) is leased or purchased for or by a facility that:

2303 (A) is a waste energy production facility;

2304 (B) is located in the state; and

2305 (C) (I) becomes operational on or after July 1, 2004; or

2306 (II) has its generation capacity increased by one or more megawatts on or after July 1,
2307 2004, as a result of the use of the [~~machinery or equipment~~] tangible personal property;

2308 (ii) has an economic life of five or more years; and

2309 (iii) is used to make the facility or the increase in capacity of the facility described in
2310 Subsection (56)(a)(i) operational up to the point of interconnection with an existing
2311 transmission grid including:

2312 (A) generating equipment;

2313 (B) a control and monitoring system;

2314 (C) a power line;

2315 (D) substation equipment;

2316 (E) lighting;

2317 (F) fencing;

2318 (G) pipes; or

2319 (H) other equipment used for locating a power line or pole; and

2320 (b) this Subsection (56) does not apply to:

2321 (i) [~~machinery or equipment~~] tangible personal property used in construction of:

- 2322 (A) a new waste energy facility; or
- 2323 (B) the increase in the capacity of a waste energy facility;
- 2324 (ii) contracted services required for construction and routine maintenance activities;
- 2325 and
- 2326 (iii) unless the [~~machinery or equipment~~] tangible personal property is used or acquired
- 2327 for an increase in capacity described in Subsection (56)(a)(i)(C)(II), [~~machinery or equipment~~]
- 2328 tangible personal property used or acquired after:
- 2329 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as
- 2330 described in Subsection (56)(a)(iii); or
- 2331 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described
- 2332 in Subsection (56)(a)(iii);
- 2333 (57) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
- 2334 or before June 30, [~~2019~~] 2027, of [~~machinery or equipment~~] tangible personal property that:
- 2335 (i) is leased or purchased for or by a facility that:
- 2336 (A) is located in the state;
- 2337 (B) produces fuel from [~~biomass energy including:~~] alternative energy, including:
- 2338 (I) methanol; or
- 2339 (II) ethanol; and
- 2340 (C) (I) becomes operational on or after July 1, 2004; or
- 2341 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as
- 2342 a result of the installation of the [~~machinery or equipment~~] tangible personal property;
- 2343 (ii) has an economic life of five or more years; and
- 2344 (iii) is installed on the facility described in Subsection (57)(a)(i);
- 2345 (b) this Subsection (57) does not apply to:
- 2346 (i) [~~machinery or equipment~~] tangible personal property used in construction of:
- 2347 (A) a new facility described in Subsection (57)(a)(i); or
- 2348 (B) the increase in capacity of the facility described in Subsection (57)(a)(i); or
- 2349 (ii) contracted services required for construction and routine maintenance activities;
- 2350 and
- 2351 (iii) unless the [~~machinery or equipment~~] tangible personal property is used or acquired
- 2352 for an increase in capacity described in Subsection (57)(a)(i)(C)(II), [~~machinery or equipment~~]

2353 tangible personal property used or acquired after:

2354 (A) the facility described in Subsection (57)(a)(i) is operational; or

2355 (B) the increased capacity described in Subsection (57)(a)(i) is operational;

2356 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a
2357 product transferred electronically to a person within this state if that tangible personal property
2358 or product transferred electronically is subsequently shipped outside the state and incorporated
2359 pursuant to contract into and becomes a part of real property located outside of this state;

2360 (b) the exemption under Subsection (58)(a) is not allowed to the extent that the other
2361 state or political entity to which the tangible personal property is shipped imposes a sales, use,
2362 gross receipts, or other similar transaction excise tax on the transaction against which the other
2363 state or political entity allows a credit for sales and use taxes imposed by this chapter; and

2364 (c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
2365 a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a
2366 refund:

2367 (i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;

2368 (ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on
2369 which the sale is made;

2370 (iii) if the person did not claim the exemption allowed by this Subsection (58) for the
2371 sale prior to filing for the refund;

2372 (iv) for sales and use taxes paid under this chapter on the sale;

2373 (v) in accordance with Section 59-1-1410; and

2374 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
2375 the person files for the refund on or before June 30, 2011;

2376 (59) purchases:

2377 (a) of one or more of the following items in printed or electronic format:

2378 (i) a list containing information that includes one or more:

2379 (A) names; or

2380 (B) addresses; or

2381 (ii) a database containing information that includes one or more:

2382 (A) names; or

2383 (B) addresses; and

2384 (b) used to send direct mail;

2385 (60) redemptions or repurchases of a product by a person if that product was:

2386 (a) delivered to a pawnbroker as part of a pawn transaction; and

2387 (b) redeemed or repurchased within the time period established in a written agreement

2388 between the person and the pawnbroker for redeeming or repurchasing the product;

2389 (61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:

2390 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;

2391 and

2392 (ii) has a useful economic life of one or more years; and

2393 (b) the following apply to Subsection (61)(a):

2394 (i) telecommunications enabling or facilitating equipment, machinery, or software;

2395 (ii) telecommunications equipment, machinery, or software required for 911 service;

2396 (iii) telecommunications maintenance or repair equipment, machinery, or software;

2397 (iv) telecommunications switching or routing equipment, machinery, or software; or

2398 (v) telecommunications transmission equipment, machinery, or software;

2399 (62) (a) beginning on July 1, 2006, and ending on June 30, ~~[2016]~~ 2027, purchases of

2400 tangible personal property or a product transferred electronically that are used in the research

2401 and development of ~~[coal-to-liquids, oil shale, or tar sands]~~ alternative energy technology; and

2402 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

2403 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes

2404 purchases of tangible personal property or a product transferred electronically that are used in

2405 the research and development of ~~[coal-to-liquids, oil shale, and tar sands]~~ alternative energy

2406 technology;

2407 (63) (a) purchases of tangible personal property or a product transferred electronically

2408 if:

2409 (i) the tangible personal property or product transferred electronically is:

2410 (A) purchased outside of this state;

2411 (B) brought into this state at any time after the purchase described in Subsection

2412 (63)(a)(i)(A); and

2413 (C) used in conducting business in this state; and

2414 (ii) for:

2415 (A) tangible personal property or a product transferred electronically other than the
2416 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property
2417 for a purpose for which the property is designed occurs outside of this state; or

2418 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
2419 outside of this state;

2420 (b) the exemption provided for in Subsection (63)(a) does not apply to:

2421 (i) a lease or rental of tangible personal property or a product transferred electronically;
2422 or

2423 (ii) a sale of a vehicle exempt under Subsection (33); and

2424 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
2425 purposes of Subsection (63)(a), the commission may by rule define what constitutes the
2426 following:

2427 (i) conducting business in this state if that phrase has the same meaning in this
2428 Subsection (63) as in Subsection (24);

2429 (ii) the first use of tangible personal property or a product transferred electronically if
2430 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or

2431 (iii) a purpose for which tangible personal property or a product transferred
2432 electronically is designed if that phrase has the same meaning in this Subsection (63) as in
2433 Subsection (24);

2434 (64) sales of disposable home medical equipment or supplies if:

2435 (a) a person presents a prescription for the disposable home medical equipment or
2436 supplies;

2437 (b) the disposable home medical equipment or supplies are used exclusively by the
2438 person to whom the prescription described in Subsection (64)(a) is issued; and

2439 (c) the disposable home medical equipment and supplies are listed as eligible for
2440 payment under:

2441 (i) Title XVIII, federal Social Security Act; or

2442 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;

2443 (65) sales:

2444 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
2445 District Act; or

- 2446 (b) of tangible personal property to a subcontractor of a public transit district, if the
- 2447 tangible personal property is:
 - 2448 (i) clearly identified; and
 - 2449 (ii) installed or converted to real property owned by the public transit district;
- 2450 (66) sales of construction materials:
 - 2451 (a) purchased on or after July 1, 2010;
 - 2452 (b) purchased by, on behalf of, or for the benefit of an international airport:
 - 2453 (i) located within a county of the first class; and
 - 2454 (ii) that has a United States customs office on its premises; and
 - 2455 (c) if the construction materials are:
 - 2456 (i) clearly identified;
 - 2457 (ii) segregated; and
 - 2458 (iii) installed or converted to real property:
 - 2459 (A) owned or operated by the international airport described in Subsection (66)(b); and
 - 2460 (B) located at the international airport described in Subsection (66)(b);
- 2461 (67) sales of construction materials:
 - 2462 (a) purchased on or after July 1, 2008;
 - 2463 (b) purchased by, on behalf of, or for the benefit of a new airport:
 - 2464 (i) located within a county of the second class; and
 - 2465 (ii) that is owned or operated by a city in which an airline as defined in Section
 - 2466 59-2-102 is headquartered; and
 - 2467 (c) if the construction materials are:
 - 2468 (i) clearly identified;
 - 2469 (ii) segregated; and
 - 2470 (iii) installed or converted to real property:
 - 2471 (A) owned or operated by the new airport described in Subsection (67)(b);
 - 2472 (B) located at the new airport described in Subsection (67)(b); and
 - 2473 (C) as part of the construction of the new airport described in Subsection (67)(b);
- 2474 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;
- 2475 (69) purchases and sales described in Section 63H-4-111;
- 2476 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and

2477 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of
2478 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
2479 lists a state or country other than this state as the location of registry of the fixed wing turbine
2480 powered aircraft; or

2481 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
2482 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
2483 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
2484 lists a state or country other than this state as the location of registry of the fixed wing turbine
2485 powered aircraft;

2486 (71) subject to Section 59-12-104.4, sales of a textbook for a higher education course:

2487 (a) to a person admitted to an institution of higher education; and

2488 (b) by a seller, other than a bookstore owned by an institution of higher education, if
2489 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a
2490 textbook for a higher education course; and

2491 (72) a license fee or tax a municipality imposes in accordance with Subsection
2492 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced
2493 level of municipal services.

2494 Section 8. Section **63M-4-401** is amended to read:

2495 **63M-4-401. Creation of Office of Energy Development -- Director -- Purpose --**
2496 **Rulemaking regarding confidential information.**

2497 (1) As used in this section, "office" means the Office of Energy Development created
2498 in Subsection (2).

2499 (2) There is created an Office of Energy Development.

2500 (3) (a) The governor's energy advisor shall appoint a director of the office.

2501 (b) The director shall report to the governor's energy advisor and may appoint staff as
2502 funding within existing budgets allows.

2503 (c) The office may consolidate energy staff and functions existing in the State Energy
2504 Program.

2505 (4) The purpose of the office is to implement:

2506 (a) the state energy policy under Section 63M-4-301; and

2507 (b) the governor's energy goals and objectives.

2508 (5) By following the procedures and requirements of Title 63J, Chapter 5, Federal
 2509 Funds Procedures Act, the office may:
 2510 (a) seek federal grants or loans;
 2511 (b) seek to participate in federal programs; and
 2512 (c) in accordance with applicable federal program guidelines, administer federally
 2513 funded state energy programs.

2514 (6) The office shall perform the duties required by Sections 59-7-614.7 and 59-10-1110
 2515 and Part 5, Alternative Energy Development Tax Credit Act.

2516 [~~6~~] (7) (a) For purposes of administering this section, the office may make rules, by
 2517 following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative
 2518 Rulemaking Act, to maintain as confidential, and not as a public record, information that the
 2519 office receives from any source.

2520 (b) The office shall maintain information the office receives from any source at the
 2521 level of confidentiality assigned by the source.

2522 Section 9. Section **63M-4-501** is enacted to read:

Part 5. Alternative Energy Development Tax Credit Act

63M-4-501. Title.

This part is known as the "Alternative Energy Development Tax Credit Act."

2526 Section 10. Section **63M-4-502** is enacted to read:

63M-4-502. Definitions.

As used in this part:

(1) "Alternative energy" is as defined in Section 59-12-102.

(2) (a) "Alternative energy entity" means a person that:

(i) conducts business within the state; and

(ii) enters into an agreement with the office that qualifies the person to receive a tax
 2533 credit.

(b) "Alternative energy entity" includes a pass-through entity taxpayer, as defined in
 2535 Section 59-10-1402, of a person described in Subsection (2)(a).

(3) "Alternative energy project" means a project produced by an alternative energy
 2537 entity if that project involves:

(a) a new or expanding operation in the state; and

- 2539 (b) (i) utility-scale alternative energy generation; or
2540 (ii) the extraction of alternative fuels.
- 2541 (4) "High paying jobs" means the annual wages of employment positions in an
2542 alternative energy entity that compare favorably against the average wage of a community in
2543 which the employment positions will exist.
- 2544 (5) "New incremental job within the state" means, with respect to an alternative energy
2545 entity, an employment position that:
- 2546 (a) did not exist within the state before:
- 2547 (i) the alternative energy entity entered into an agreement with the office in accordance
2548 with Section 63M-4-503; and
- 2549 (ii) the alternative energy project began;
- 2550 (b) is not shifted from one location in the state to another location in the state; and
2551 (c) is established to the satisfaction of the office, including by amounts paid or
2552 withheld by the alternative energy entity under Title 59, Chapter 10, Individual Income Tax
2553 Act.
- 2554 (6) "New state revenues" means an increased amount of tax revenues generated as a
2555 result of an alternative energy project by an alternative energy entity or a new incremental job
2556 within the state under the following:
- 2557 (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
2558 (b) Title 59, Chapter 10, Individual Income Tax Act; and
2559 (c) Title 59, Chapter 12, Sales and Use Tax Act.
- 2560 (7) "Office" is as defined in Section 63M-4-401.
- 2561 (8) "Tax credit" means a tax credit under Section 59-7-614.7 or 59-10-1110.
- 2562 (9) "Tax credit applicant" means an alternative energy entity that applies to the office
2563 to receive a tax credit certificate under this part.
- 2564 (10) "Tax credit certificate" means a certificate issued by the office that:
- 2565 (a) lists the name of the tax credit certificate recipient;
2566 (b) lists the tax credit certificate recipient's taxpayer identification number;
2567 (c) lists the amount of the tax credit certificate recipient's tax credits authorized under
2568 this part for a taxable year; and
2569 (d) includes other information as determined by the office.

2570 (11) "Tax credit certificate recipient" means an alternative energy entity that receives a
2571 tax credit certificate for a tax credit in accordance with this part.

2572 Section 11. Section **63M-4-503** is enacted to read:

2573 **63M-4-503. Tax credits.**

2574 (1) (a) By following the procedures and requirements of Title 63G, Chapter 4,
2575 Administrative Procedures Act, the office shall set standards an alternative energy entity shall
2576 meet to qualify for a tax credit.

2577 (b) The office shall certify that:

2578 (i) the alternative energy entity plans to produce in the state at least:

2579 (A) two megawatts of electricity; or

2580 (B) 1,000 barrels per day if the alternative energy project is a crude oil equivalent
2581 production;

2582 (ii) the alternative energy project generates new state revenues;

2583 (iii) the alternative energy entity that receives a tax credit under this part meets the
2584 requirements of Section 63M-4-504; and

2585 (iv) the alternative energy entity has received a Certificate of Good Standing from the
2586 Division of Corporations and Commercial Code.

2587 (3) If an alternative energy entity meets the requirements of this part to receive a tax
2588 credit, the office shall enter into an agreement with the alternative energy entity to authorize the
2589 tax credit in accordance with Subsection (4).

2590 (4) (a) If the office expects that the time from the commencement of construction until
2591 the end of the economic life of the alternative energy project is less than 40 years:

2592 (i) the office shall grant a tax credit for the lesser of:

2593 (A) the economic life of the alternative energy project; or

2594 (B) 20 years; and

2595 (ii) the tax credit is equal to:

2596 (A) 40% of new state revenues generated by the alternative energy project if the office
2597 expects that the time from the commencement of construction until the end of the economic
2598 life of the alternative energy project is less than 20 years;

2599 (B) 60% of new state revenues generated by the alternative energy project if the office
2600 expects that the time from the commencement of construction until the end of the economic

2601 life of the alternative energy project is 20 years or more but less than 30 years; or
2602 (C) 75% of new state revenues generated by the alternative energy project if the office
2603 expects that the time from the commencement of construction until the end of the economic
2604 life of the alternative energy project is 30 years or more but less than 40 years.
2605 (b) If the office expects that the time from the commencement of construction until the
2606 end of the economic life of the alternative energy project is 40 years or more:
2607 (i) the office shall grant a tax credit for the lesser of:
2608 (A) the economic life of the alternative energy project; or
2609 (B) 30 years; and
2610 (ii) the tax credit is equal to 75% of new state revenues generated by the alternative
2611 energy project.
2612 (5) An alternative energy entity that is authorized under this part to receive a tax credit
2613 shall:
2614 (a) annually file a report with the office showing the new state revenues generated by
2615 the alternative energy project during the previous calendar year;
2616 (b) retain records supporting a claim for a tax credit for at least four years after the
2617 alternative energy entity claims a tax credit under Section 59-7-614.7 or 59-10-1110; and
2618 (c) submit to an audit for verification of a tax credit the alternative energy entity claims
2619 under Section 59-7-614.7 or 59-10-1110.
2620 Section 12. Section **63M-4-504** is enacted to read:
2621 **63M-4-504. Qualifications for tax credit -- Procedure.**
2622 (1) The office shall certify an alternative energy entity's eligibility for a tax credit as
2623 provided in this section.
2624 (2) A tax credit applicant shall provide the office with:
2625 (a) an application for a tax credit certificate;
2626 (b) documentation that the tax credit applicant meets the standards and requirements
2627 described in Section 63M-4-503 to the satisfaction of the office for the taxable year for which
2628 the tax credit applicant seeks to claim a tax credit; and
2629 (c) documentation that expressly directs and authorizes the State Tax Commission to
2630 disclose to the office the tax credit applicant's returns and other information concerning the tax
2631 credit applicant that would otherwise be subject to confidentiality under Section 59-1-403 or

2632 Section 6103, Internal Revenue Code.

2633 (3) (a) The office shall submit the documentation described in Subsection (2)(c) to the
2634 State Tax Commission.

2635 (b) Upon receipt of the documentation described in Subsection (2)(c), the State Tax
2636 Commission shall provide the office with the documentation described in Subsection (2)(c)
2637 requested by the office that the tax credit applicant directed and authorized the State Tax
2638 Commission to provide to the office.

2639 (4) If, after the office reviews the documentation described in Subsections (2) and (3),
2640 the office determines that the documentation supporting the tax credit applicant's claim for a
2641 tax credit is not substantially accurate, the office shall:

2642 (a) deny the tax credit; or

2643 (b) inform the tax credit applicant that the documentation supporting the tax credit
2644 applicant's claim for a tax credit was inadequate and ask the tax credit applicant to submit new
2645 documentation.

2646 (5) If, after the office reviews the documentation described in Subsections (2) and (3),
2647 the office determines that the documentation supporting the tax credit applicant's claim for a
2648 tax credit is substantially accurate, the office shall, on the basis of that documentation:

2649 (a) enter into the agreement described in Section 63M-4-503;

2650 (b) issue a tax credit certificate to the tax credit applicant; and

2651 (c) provide a duplicate copy of the tax credit certificate described in Subsection (5)(b)
2652 to the State Tax Commission.

2653 (6) An alternative energy entity may not claim a tax credit under this part unless the
2654 alternative energy entity is a tax credit certificate recipient.

2655 (7) A tax credit certificate recipient that claims a tax credit shall retain the tax credit
2656 certificate in accordance with Subsection 63M-4-503(5)(b).

2657 Section 13. Section **63M-4-505** is enacted to read:

2658 **63M-4-505. Report to the Legislature.**

2659 The office shall report annually to the Public Utilities and Technology Interim
2660 Committee and the Revenue and Taxation Interim Committee describing:

2661 (1) its success in attracting alternative energy projects to the state and the resulting
2662 increase in new state revenues under this part;

2663 (2) the amount of tax credits the office has granted or will grant and the period of time
2664 during which the tax credits have been or will be granted; and

2665 (3) the economic impact on the state by comparing new state revenues to tax credits
2666 that have been or will be granted under this part.

2667 Section 14. **Repealer.**

2668 This bill repeals:

2669 Section **63M-1-2801, Title.**

2670 Section **63M-1-2802, Findings.**

2671 Section **63M-1-2803, Definitions.**

2672 Section **63M-1-2804, Creation of alternative energy development zones -- Tax**
2673 **credits.**

2674 Section **63M-1-2805, Qualifications for tax credit -- Procedure.**

2675 Section **63M-1-2806, Report to the Legislature.**

2676 Section 15. **Effective date -- Retrospective operation.**

2677 (1) Except as provided in Subsection (2) or (3), this bill takes effect on May 8, 2012.

2678 (2) The amendments to or enactments of the following sections have retrospective
2679 operation for a taxable year beginning on or after January 1, 2012:

2680 (a) Section 59-7-614.2;

2681 (b) Section 59-7-614.7;

2682 (c) Section 59-10-1107; and

2683 (d) Section 59-10-1110.

2684 (3) The amendments to the following sections take effect on July 1, 2012:

2685 (a) Section 10-1-304;

2686 (b) Section 59-12-102; and

2687 (c) Section 59-12-104.

Legislative Review Note
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Office of Legislative Research and General Counsel